

No. 50144-9-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

DUNGENESS HEIGHTS HOMEOWNERS
a nonprofit corporation,
Appellant,

v.

RADIO PACIFIC, INC., SHIRLEY J. TJEMSLAND, CLALLAM
COUNTY, and T-MOBILE WEST LLC,
Respondents.

BRIEF OF APPELLANT

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I. INTRODUCTION

Respondents Shirley Tjemsland and Radio Pacific, Inc. (collectively “RPI”) seek conditional use and height variance permits (“Permits”) for a radio and cell tower proposed in the high-end Dungeness Heights rural residential neighborhood near Sequim Washington. The zoning code allows a maximum tower height of 100-feet in the subject Rural Neighborhood Conservation (“NC”) zone to protect “scenic resources, property rights, and rural characteristics of Clallam County” pursuant to CCC 33.49.100(2)(a).¹ RPI wants a 150-foot tower. Respondent Clallam County through its Hearing Examiner (“Examiner”) approved the Permits. Appellant Dungeness Heights Homeowners (“DHH”) opposes the Permits. Respondent T-Mobile West LLC has been dismissed through a Stipulated Order. (CP160-67)²

This Court should reverse the Examiner’s approval of the Permits. One requirement for a conditional use permit (“CUP”) is that the “proposed action is consistent with [the zoning code - Title 33 CCC]” (CCC 33.27.040(1)(b); CP149) DHH will show that the proposed CUP is inconsistent with the zoning code. First, CCC 33.49.520(2) requires a setback “measured from the base of the WCF support tower to the property line of the parcel on which it is located.” CCC 33.49.520(2)(a) requires this

¹ “CCC” means Clallam County Code. All cited CCC sections are provided in Appendix B hereto including the full version of Chapter 33.49 CCC. CCC 33.49.100(2)(a) is the first specific goal of the Wireless Communications Facilities Chapter 33.49 CCC:

Manage wireless telecommunications facilities siting consistent with the Clallam County Comprehensive Plan while protecting the scenic resources, property rights, and rural characteristics of Clallam County.

² “CP” refers to Clerk’s Papers and “160-67” refers to page 160 to 167. “AR” refers to the Administrative Record in three binders. “RP” refers to the Verbatim Report of Proceedings of the Hearing Examiner 1-27-2016 hearing. “RPTC” refers to the Verbatim Report of Proceedings of the Clallam County trial court 12-20-2016 hearing. “A”, “B”, “C”, and “D” refer to Appendices A, B, C, and D hereto, respectively.

setback to be 165-feet for a 150-foot tall tower. But the proposed setback is only 15 to 20-feet. Second, CCC 33.49.410 was not used to evaluate the proposal as required by the zoning code. Third, the tower height variance is not valid and without a valid tower height variance, consistency with the zoning code limits tower height to 100-feet in the NC zone (a Preference 3 area). (CCC 33.49.520(1)(b)(ii) and 33.49.400(2))

The Clallam County zoning code and Hearing Examiner system are adopted under the authority of the Planning Enabling Act (Chapter 36.70 RCW) and under other authorities not herein relevant. (CCC 31.01.100; CCC 26.04.010) Under the Planning Enabling Act a variance is defined as:

the means by which an adjustment is made in the application of the specific regulations of a zoning ordinance to a particular piece of property, which property, because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the same vicinity and zone and which adjustment remedies disparity in privileges.

(RCW 36.70.020(14)) A local requirement for a variance is:

That because of special circumstances applicable to subject property including size, shape, topography and location, the strict application of this regulation would deprive subject property owner of rights and privileges enjoyed by other property owners in the vicinity and within the same zone as set forth in the official zoning map;

(CCC 33.30.030(1) DHH will show that this statute and ordinance must be harmonized so that the adjustment allowed by the variance is limited to providing the subject property with privileges commonly enjoyed by neighboring properties in the same zone. The 150-foot tower height variance provides the subject property with a privilege not commonly enjoyed by neighboring properties in the same zone.

DHH will show that it deserves relief under the Land Use Petition Act (“LUPA”) standards in 36.70C.130(1)(b), (c), and (d). This Court should find that the tower height variance is not valid because of lack of compliance with local ordinance requirements in consideration of RCW 36.70.020(14). This Court should then reverse the approvals of the variance and conditional use permits and award appropriate costs to DHH including costs DHH has already paid in response to the trial court’s Judgment Summary and Cost Bill at CP21-24.

II. ASSIGNMENTS OF ERROR

A. Errors Of The Examiner’s Decision At CP138-58

No. 1. Error under (b)³ and (c) in concluding at CP151 that the “proposed monopole satisfies the . . . performance standards” as to setbacks as required by CCC 33.49.520(2), and in concluding that the “175-foot easement . . . sufficiently meets the setback requirements for a 150-foot WCF tower.”⁴

No. 2. Error under (b), (c), and (d) in CP138-59 in the land use decision’s failure to implement CCC 33.49.410 in consideration of CCC 33.49.400(2).

No. 3. Error under (b), (c), and (d) in concluding at CP151 that the “proposed monopole satisfies the . . . performance standards” as to tower height as required by CCC 33.49.520(1) and -(1)(b)(ii) in consideration of CCC 33.49.400(2) because as shown below the tower height variance is not valid as approved.

³ Reference to (b), (c), and (d) are references to RCW 36.70C.130(1)(b), -(c), and -(d) respectively, unless the context indicates otherwise.

⁴ “WCF” is the abbreviation for Wireless Communications Facility which is defined in CCC 33.49.300(27).

No. 4. Error under (b), (c), and (d) in concluding at CP152 that the conditional use permit “proposal is consistent with the Clallam County Zoning Code.”

No. 5. Error under (b), (c), and (d) at CP138 and CP157 in approving zoning conditional use Permit (CUP2015-00007) and zoning variance (VAR2015-00004) because these Permits are not valid as approved.

No. 6. Error under (b), (c), and (d) in CP154 by failing to harmonize CCC 33.30.030(1) with RCW 36.70.020(14) and by failing to limit the adjustment made by the variance to providing the subject property with those privileges commonly enjoyed by neighboring properties in the same NC zone.

No. 7. Error under (b), (c), and (d) in Para. 16 at CP154 in finding that CCC 33.30.030(1) is satisfied and in misapplying *St. Clair v. Skagit County*, 43 Wn.App. 122, 126, 715 P.2d 165, 168 (1986). (See CP153 for CCC 33.30.030(1) to (4))

No. 8. Error under (b), (c), and (d) in Para. 19 at CP155 in finding that CCC 33.30.030(4) is satisfied by concluding approval of the tower height “variance will not constitute a grant of special privilege.”

No. 9. Error under (b), (c), and (d) in Para. 20 at CP155-56 regarding CCC 33.49.530(1) in finding that “strict adherence to the provisions of [Chapter 33.49 CCC] would result in an inability of the applicant to provide adequate ‘in-vehicle’ services within Clallam County.”

No. 10. Error under (b), (c), and (d) in Para. 17 at CP154-55 in finding that CCC 33.30.030(2) is satisfied with respect to the tower height variance not

being “injurious to property” and in particular to “property value” for nearby residential properties with high-end homes.

No. 11. Error under (b), (c), and (d) in Para. 23 at CP156 and in stating that “the applicant has satisfied the above [seven local code] requirements for a [tower] height . . . variance.”

No. 12. Error under (b) and (d) in Para. 23 at CP156 in misapplying *City of Medina v. T-Mobile USA, Inc.*, 123 Wn.App. 19, 26, 95 P.3d 377, 380 (2004).

No. 13. Multiple errors under (b), (c), and (d) in Findings of Fact and in failing to support conclusions with Findings (per CCC 26.04.050(10)), including any facts or conclusions related to the previously identified errors and also including:

a) In Para. 9 at CP149-50, the Examiner’s Decision states that the proposed location “is necessary given that placement of the tower in another location would not satisfy the applicant’s objectives.” This conclusion is too broad to be supported and is not supported by findings or substantial evidence in the decision.

b) In Para. 10 at CP150, the Examiner’s Decision states “that co-locating at this location with T-Mobile will decrease the number of future towers in Clallam County.” This conclusion is not supported by findings or substantial evidence.

c) In Para. 10 at CP150, the Examiner’s Decision concludes that approval of the CUP is necessary to meet CCC 33.49.400(1)(a) “minimizing

the total number of towers.” This conclusion is not supported by findings or substantial evidence.

- d) In Para. 9 at CP146 it states lots in the Dungeness Heights subdivision “range from .25 to 1.0 acre” but all residential lots in the Dungeness Heights subdivision, at least in the vicinity of subject parcel, are less than 1.0 acre. (CP58-59) The minimum lot size in the NC zone is 1.0 acre. (CCC 33.10.015(6)) All of these lots less than 1.0 acre are non-conforming in size.
- e) In Para. 10 at CP151, the Examiner’s Decision errors when it finds the applicant’s appraisal information sufficient when it does not qualify as substantial evidence if considered for compliance with CCC 33.30.030(2).
- f) If this Court finds the applicant’s appraisal evidence does not qualify as substantial evidence then this Court should find that the Examiner’s Decision is in error under (d) in Para. 17 at CP154-55.

No. 14. Typo Errors in the Examiner’s Decision.

- a) A typo in Para. 6 at CP145 in that the Applicant was Shirley Tjemsland and not Ken Hays for both Permits. (CP29; CP35)
- b) Typos in Para. 7 at CP145 in that the subject property is not “400 feet south of Brigadoon Blvd.” because Para. 4 at CP145 defines the “subject property” as one of the landowner’s two parcels and both parcels are contiguous to Brigadoon Blvd. (CP62-63) Also the subject property is “Parcel 4” and not “Parcel A”. (*Id.*)
- c) A typo in Para. 12 at CP146 in that it incorrectly states the northern portion of the subject property is a landslide hazard critical area. This critical

area is instead on the southern portion of the subject property. (CP58-59; CP62-63)

d) A typo in Para. 13 at CP146 states the monopole would be “17 1/4 inches in diameter at the top.” At the hearing before the Examiner, the County Planner Mr. Ballard clarified that the top 15-feet of the tower was reduced from 17 1/4 inches to 8 inches in diameter. (RP8)

B. Errors Of The Superior Court’s Decisions At CP7-24

No. 1. Error in affirming at CP8-20 the Examiner’s findings of fact and conclusions of law that are challenged in Section II(A) of this brief.

No. 2. Error at CP9 and CP 21-22 in entering Judgment for Respondents and in awarding costs as statutory attorney’s fees to Respondents.

No. 3. Error at CP8 in concluding that DHH did not meet the standards in (b), (c), and/or (d) for reversal of the conditional use and tower height variance permits.

III. MAJOR ISSUES BEFORE THE COURT

No. 1. Should the tower height variance (VAR2015-00004) be found not valid as approved? (Examiner Error Nos. 5-12 and 13(d) to (f); Superior Court Error Nos. 1-3)

No. 2. Should the conditional use permit (CUP2015-00007) be found not valid as approved? (Examiner Error Nos. 1-5 and 13(a) to (c); Superior Court Error Nos. 1-3)

IV. STATEMENT OF THE CASE

The subject property is located in a Rural Neighborhood Conservation (NC) rural zone which is a Preference 3 area for new WCF towers.⁵ (CP146, Para 8; AR453-54; CCC 33.49.400(2)) A new WCF tower in a Preference 3 area requires a Type III conditional use permit. (CCC 33.49.620 and CCC Table 33.49.620) A Type III conditional use permit requires a hearing and final decision by the Examiner. (CCC 26.10.220(1))

RPI was granted a WCF conditional use permit on the subject property on August 26, 2015 for a 100-foot mono-spag tower designed solely to accommodate Radio Pacific's three 104.9 FM antennas. (CP145, Para 2) The 100-foot tower is shown on AR156 in plan view as a double circle on a concrete pad in the southeast quadrant of a 50-foot by 50-foot compound on the subject property. There was no appeal of this Examiner decision.

One month later, RPI applied for a conditional use permit for a new WCF tower for Radio Pacific's FM antennas and for cellular service antennas to be located in the southwest quadrant of the same 50-foot by 50-foot compound. (CP145, Para 1; AR47) This second WCF tower is proposed to be 150-feet in height. (CP138) In CCC 33.49.520(1) and -(1)(b)(ii), the zoning code establishes that the maximum height for a tower (including antennas) is 100-feet in this Preference 3 area. (CCC 33.49.300(14)) Without a valid tower height variance, the 150-foot proposed tower is

⁵ RPI objected to review as a new tower. (CP149, Para. 6) The trial court erred when he characterized the new tower as "an extension in height to a previously approved . . . tower from 100 feet to 150 feet." (CP10:25-27 meaning-CP10, lines 25-27) The CUP application clearly describes the proposed structure as a "new WCF tower" and not as a CUP amendment. (CP28)

inconsistent with the 100-foot allowed tower height in the zoning code. CCC 33.49.530 allows a tower height variance to be requested using the “procedures and criteria specified in Chapter 33.30 CCC, Variances.” Use variances are not permitted. (CCC 33.30.020) RPI requested a variance to “Increase allowed cell tower height from 100' to 150'.” (AR35)

The hearing before the Examiner on the new proposed variance and conditional use permits for the 150-foot tower was set for December 9, 2015. (CP145, Para 3) The Staff Report issued on December 2, 2015 recommended that the variance and conditional use permits be denied. (AR27) At the request of the applicant the hearing was continued to January 27, 2016. (AR509) Notice was properly given. (AR1008-21) The hearing was held on January 27, 2016. (CP138) The Examiner Decision was issued on March 3, 2016 approving the applications for the variance and conditional use permits subject to conditions. (CP138-58) At the applicant’s request, the Examiner issued a clarification on March 8, 2016. (CP159)

DHH timely filed and served its Land Use Petition on March 24, 2016 challenging the Examiner’s Decision. The LUPA Initial Hearing was held on May 13, 2016. On June 10, 2016, the trial court issued a Memorandum Opinion and Order (“Order”) denying four Respondent Motion’s to Dismiss including one requesting dismissal pursuant to CR 12(b)(1) for lack of subject matter jurisdiction. The trial court ruled that it has “subject matter jurisdiction, at least in the sense that it has appellate jurisdiction over LUPA cases.” The trial court allowed an amended Land Use Petition solely to add Clallam County to the caption and that Petition was served on June 14, 2016 and filed two days later. (CP125-59)

The trial court held a hearing on the merits on December 20, 2016.⁶ A Memorandum Opinion (CP10-19) was issued on February 7, 2017 which was not an Order but did affirm “the findings of fact and conclusions of law of the hearing examiner.” (CP19) The trial court issued its Final Decision (“Findings of Fact, Conclusions of Law and Judgment”) on February 24, 2017 which had the Memorandum Opinion attached. (CP7-19) This Final Decision affirms the Examiner’s Decision. (CP9)

Also on February 24, 2017, the trial court issued a Judgment Summary and Cost Bill granting Respondents \$400 in costs for statutory attorney fees. (CP21-23) Those costs were promptly paid and a Satisfaction of Judgment was filed by Clallam County on March 13, 2017 and by RPI on March 22, 2017.

On March 27, 2017, DHH timely-filed and timely-served a Notice of Appeal to Court of Appeals, Division II to initiate this review and to challenge the Examiner’s Decision and the trial court’s Judgment Summary and Cost Bill.

V. ARGUMENT

A. Standard Of Review

LUPA (Chapter 36.70C RCW) provides the “exclusive means of judicial review of land use decisions” with exceptions not herein relevant. (RCW 36.70C.030(1)) This Court can grant relief to Petitioner:

⁶ Petitioner DHH’s Opening Brief (CP50-124) includes an Appendix A (CP94-124). The filed and served copies of Appendix A are in color. Appendix A hereto is a color copy of that Appendix. At the hearing on the merits DHH distributed a handout of 8 pages from the AR for discussion purposes. A copy of that handout is Appendix C hereto.

only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met. The [relevant] standards are:

...

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts;

(RCW 36.70C.130(1)) Petitioner seeks relief under subsections (1)(b), (1)(c), and (1)(d).

Whether a decision involves an erroneous interpretation of the law under standard (b) is a question of law that courts review de novo. The substantial evidence standard of review, under standard (c), requires the court to determine whether a fair-minded person would be persuaded by the evidence of the truth of the challenged findings. Under this standard, the court considers all of the evidence and reasonable inferences in the light most favorable to the party who prevailed in the highest forum that exercised fact-finding authority. Finally, under standard (d), a decision is clearly erroneous if, although there is evidence to support it, the reviewing court on the record is left with the definite and firm conviction that a mistake has been committed.

(*Lauer v. Pierce County*, 173 Wn.2d 242, 252-53, 267 P.3d 988 (2011) (punctuation and citations omitted)) DHH, because it filed the LUPA appeal, has the burden of showing that one or more of the standards in RCW 36.70C.130(1) is met. (*City of Federal Way v. Town & Country Real Estate, LLC*, 161 Wn.App. 17, 36, 252 P.3d 382 (2011))

In reviewing a land use decision under LUPA, an appellate court stands in the same position as the superior court and reviews the Examiner's Decision on the basis of the administrative record. (*Mellish v. Frog*

Mountain Pet Care, 172 Wn.2d 208, 212, 257 P.3d 641 (2011); *Lauer v. Pierce County*, 173 Wn.2d 242, 253, 267 P.3d 988 (2011); *Wellington River Hollow, LLC v. King County*, 121 Wn.App. 224, 230, 53 P.3d 213 (2002)) Where, as here, the superior court is required to serve in an appellate capacity to review a land use decision but issues findings of fact and conclusions of law, an appellate court disregards such findings and conclusions as surplusage. (*Wellington River Hollow, LLC* at 230, Note 3.)

For mixed questions of law and fact, DHH requests that this Court adopt the Administrative Procedures Act analysis as described in *Franklin County Sheriff's Office v. Sellers*, 97 Wn.2d 317, 329-30, 646 P.2d 113, (1982). First, the correct law is determined “de novo” under RCW 36.70C.130(1)(b) and then, second, the Court applies the correct law to the correct facts as determined using the substantial evidence test in RCW 36.70C.130(1)(c). (*Id.*) Finally, the Court determines if the land use decision is clearly erroneous under RCW 36.70C.130(1)(d) when compared to the correct law applied to the correct facts. (*Id.*)

No deference is given to the Examiner or County when interpreting statutes of statewide application. (*City of Federal Way v. Town & Country Real Estate, LLC*, 161 Wn.App. 17, 252 P.3d 382, (2011)) Local ordinances are interpreted in the same way that Courts interpret statutes and if the ordinance is unambiguous, the ordinance is given its plain meaning without interpretation:

We interpret local ordinances, such as the TCSC ["Thurston County Sanitary Code"], in the same way that we interpret statutes. We may also discern plain meaning from related provisions and the statutory scheme as a whole. If statutory language is unambiguous, we need not employ canons of statutory construction.

(*Griffin v. Thurston County*, 165 Wn.2d 50, 55, 196 P.3d 141 (2008))

(citations omitted)) No deference is given to an Examiner's interpretation when a local ordinance is unambiguous:

The LUPA standard of review in RCW 36.70C.130(1)(b) directs us to give "such deference as is due the construction of a law by a local jurisdiction with expertise." However, because we find that the Code is unambiguous on its face, we do not give deference to the Board's construction.

(*Griffin* at 58 Note 3 (2008))

B. This Court Should Find The CUP Is Not Valid As Approved (Error Nos. 1-5 And 13(a), (b), And (c))

This Court should reverse the approval of the CUP because the proposed action is not consistent with the zoning code. For the Examiner to validly approve a CUP, and for this Court to uphold that approval, the CUP must meet the requirement of CCC 33.27.040(1)(b) ("The proposed action is consistent with this title [Title 33 CCC - Zoning]") DHH will meet its burden to show that the proposed action is not consistent with the zoning code.

1. The Proposed Action Does Not Meet The WCF Setback Requirements In The Zoning Code (Error Nos. 1, 4, And 5)

The proposed new tower does not meet the plain language requirements of the unambiguous setback ordinance in the WCF chapter of the zoning code.

Setbacks. Setbacks shall be measured from the base of the WCF support tower to the property line of the parcel on which it is located. Setbacks for auxiliary structures shall be those of the underlying zoning district or a minimum of twenty-five (25) feet, whichever is greater. The following setback standards shall apply for new support tower installations:

(a) Setbacks shall be equal to 110 percent of the height of the support tower or 150 feet, whichever is greater.

(CCC 33.49.520(2)) As discussed above, a requirement for CUP approval is that the “proposed action is consistent with [the zoning code].” (CP149, Para. 7) The above-quoted performance standard in CCC 33.49.520(2) in the WCF chapter of the zoning code establishes a plain language zoning requirement that the base of the new 150-foot WCF support tower must be at least 165 feet away from “the property line of the parcel on which [the tower] is located.” This language is unambiguous

The Conditional Use Permit Application at CP28 identifies the parcel on which the tower is located as a 9+-acre parcel with Tax Parcel Number 033006-24-9160 with Shirley Tjemsland as the landowner. The 9+-acre parcel on the Tjemsland Short Plat is shown on AR59 with Tax Parcel Number *-24-9160, on AR62-63⁷, AR447, and on AR92 and AR801 with Tax Parcel Number 033006-249160. The location of the 50-foot by 50-foot compound is shown on AR447 and AR801. Details within the 50-foot by 50-foot compound for the 150-foot tower are shown on AR448 and AR802. DHH notified the County in November of 2015 that the tower was only about

⁷ The Examiner has a typo in his parcel description of the subject property in Para. 7 at CP145 because the parcel is not “Parcel A” but instead is “Parcel 4” with the other parcels in the Short Plat numbered 1, 2, and 3. (AR62-63)

15-feet from the “property line of the parcel on which it is located” in violation of CCC 33.49.520(2). (AR439)

The January 20, 2016 Staff Report (AR512-40) agrees that “The proposed mono-pine on Lot 4 . . . is not 165 feet from the [common parcel property line with] Lot 3 of this short plat.” (AR529) The County declares “CCC 33.49.520(2)(a), a provision which, all parties admit, requires a setback of 110% for any WCF or 165' for this WCF.” (CP 251-52) RPI agrees. (CP195:10-13)

The Examiner does not implement the unambiguous plain meaning of CCC 33.49.520(2) but instead interprets CCC 33.49.520(2) and -(2)(a) and finds compliance with these ordinances by stating:

The tower has a 175-foot easement which sufficiently meets the setback requirements for a 150-foot WCF tower.

The only 175-foot easement is on Tjemsland Lot 3 (the one-acre parcel on AR62-63) and is described in AR101, Para. No. 1 and AR132 and illustrated in AR104 as being the south 175-feet of said Lot 3. There is also a 50-foot by 50-foot easement for the compound described at AR134 and illustrated in AR130, a 150-foot tree buffer easement on said Lot 4 all around the outside of the compound described at AR 131 and illustrated in AR130, and an access easement on said Lot 4 described at AR 133 and also illustrated in AR130.

The 175-foot easement is granted to Radio Pacific, Inc. by Shirley Tjemsland. (AR101 - first paragraph). On AR101, AR104, and AR132, this easement is referred to as being “exclusive.” But in AR101, Para. No. 2, it states that the Grantor, Shirley Tjemsland, retains the right to use the area

“for any purpose” that does not interfere “with Grantee’s use of the Easement.” Such an easement does not change the location of the property lines of the parcel on which the tower is located. The closest property lines of said Lot 4 to the base of the tower are the easterly and southerly interior property lines of Lot 4 that are joined together at the southeast interior corner of Lot 4 which is also the southeast exterior corner of said Lot 3. This southeast interior corner of Lot 4 and southeast exterior corner of Lot 3 is identifiable on AR802 as being at the center of the westerly side of the 50-foot by 50-foot compound⁸. This is confirmed by the legal description of the 150-foot tree buffer easement that starts at the southeast corner of Lot 3 and then goes 175 feet northerly to get to the northerly boundary of the 150-foot easement.

A close look at AR802 shows that “the base of the WCF support tower to the property line of the parcel on which it is located” is approximately 20-feet and is not consistent with the 165-foot setback required by the unambiguous plain language of the WCF zoning code in CCC 33.49.520(2) and -(2)(a).

Local ordinances are interpreted in the same way that Courts interpret statutes and if the ordinance is unambiguous, the ordinance is given its plain meaning without interpretation. (*Supra* at 12-13; *Griffin v. Thurston County*, 165 Wn.2d 50, 55, 196 P.3d 141 (2008); *Ellensburg Cement Prods., Inc. v. Kittitas County*, 179 Wn.2d 737, 743, 317 P.3d 1037, (2014)) No deference is given to an Examiner’s interpretation when a local ordinance is

⁸ Lot 4 property lines are shown in long dash plus two short dash coded lines on AR802.

unambiguous. (*Supra* at 13; *Griffin* at 58 Note 3 (2008)) Because CCC 33.49.520(2) and -(2)(a) are unambiguous, this Court should apply the plain language without interpretation and find that a 165-foot setback is required from the base of the tower to the property line of the parcel (Lot 4) on which the tower is located.

Because the granting of the 175-foot easement does not change the location of the property lines of the parcel (Tax Parcel Number 033006-249160) on which the tower is located, the Examiner's land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise.⁹ DHH has met its burden to show that the standard in RCW 36.70C.130(1)(b) has been met. Of course, this land use decision approving the CUP based on the conclusion at CP152 that the proposal is consistent with the zoning code is also not supported by substantial evidence because there is no evidence of compliance with the 165-foot required setback. DHH has met its burden to show that the standard in RCW 36.70C.130(1)(c) has also been met.

2. The CUP Approval Is Inconsistent With The Zoning Code Because Of Failure The Decision To Apply CCC 33.49.410 (Error Nos. 2, 4, 5, And 13(a), (b), And (c))

The CUP approval is inconsistent with the zoning code because this land use decision fails to mention or apply CCC 33.49.410 in evaluating the 150-foot tower proposal. CCC 33.49.410 is a WCF zoning ordinance that provides a "priority list" that "is to be utilized in evaluating WCF proposals."

⁹ No deference is due to the Examiner because the plain language of CCC33.49.520(2) is unambiguous. (*Supra*)

(CCC 33.49.410(preamble)) The CUP land use decision is inconsistent with this zoning code because it does not show that it evaluated the 150-foot tower proposal using this “priority list.” The “priority list” has eight specific choices arranged in descending order with the highest choice first. (CCC 33.49.410)

The highest two choices are co-location on support structures or towers in non-residential related (first choice) or residential related (second choice) districts. (CCC 33.49.410(1) and (2)) The Examiner fails to evaluate whether the NC zone is non-residential or residential related. Both uses are allowed. (CCC 33.10.015) The Examiner states that Radio Pacific and T-Mobile showed they could not locate on any existing support tower except the 100-foot tower on the subject property. (CP147, Para. 19) Importantly, the land use decision finds that “T-Mobile will be co-locating with the recently approved Radio Pacific WCF Tower” which is the said 100-foot tower. (CP147, Para. 19) The “priority list” on its face favors that co-location. The 100-foot tower is also capable of accommodating any desired emergency antennas. These antennas need not be installed over 90-feet in height. (RP32:18-23) There is no analysis of existing support towers in the record to show that Radio Pacific could not also co-locate on another existing support tower.

The third choice on the “priority list” is “power pole replacements.” (CCC 33.49.410(3)) Such “power pole replacements” are defined in CCC 33.49.510(2) and are “encouraged” by the legislative body apparently because they are considered the least intrusive after co-location. The record shows that without co-location on the 100-foot tower, that T-Mobile would need 3

power pole replacements to provide equally reliable in-home coverage compared to that which can be provided by the proposed 150-foot tower.¹⁰ (AR933; AR938) There is no analysis regarding needed power pole replacements, if any, to provide T-Mobile with adequate in-vehicle coverage. There is no analysis regarding number of needed power pole replacements to provide this equally reliable in-home coverage or adequate in-vehicle coverage with T-Mobile co-locating on the 100-foot tower. Without the Examiner having this information it is impossible to reasonably evaluate the 150-foot tower proposal using the “priority list” in CCC 33.49.410.¹¹

The fourth and sixth choices on the “priority list” are new attached WCF on support structures not currently used for other WCFs in nonresidential related districts (fourth choice) and in residential related zones (sixth choice). (CCC 33.49.410(4) and (6)) There is no information in the record that analyzed these choices. It is impossible to reasonably evaluate the 150-foot tower proposal using the “priority list” in CCC 33.49.410 without information regarding the availability of these higher choice WCFs.

The fifth, seventh, and eighth choices on the “priority list” are new support towers in Preference 1 areas (fifth choice), in Preference 2 areas (seventh choice), and in Preference 3 areas (eight, and last specific choice). (CCC 33.49.410(5), (7), and (8); *See* CCC 33.49.400(2) for Preference area

¹⁰ AR933 and AR938 show that other carriers would need 1 to 3 power pole replacements to provide equally reliable in-home coverage to that provided by the approximately 126-foot high co-location on the proposed 150-foot tower. There is no data regarding adequate in-vehicle coverage for other providers. Only one carrier can be located at the 126-foot level (the highest wireless location on the proposed mono-fir - see AR901 and AR49).

¹¹ DHH contends that with T-Mobile co-locating on the 100-foot tower, there would be adequate in-vehicle coverage and therefore the variance for the 150-foot tower would be prohibited by CCC 33.49.530(preamble) and (1).

descriptions) The analysis in the record provides no serious attempt to evaluate Preference 2 areas for new towers. Towers are permitted to be 150-feet tall in Preference 2 areas by right. (CCC 33.49.520(1)(b)(ii)) It is important to have reasonable analysis of higher priority options to see if those options can provide adequate “in-vehicle” service because if adequate “in-vehicle” service can be provided without a variance, then the tower height variance for the proposed 150-foot tower must be denied (or reversed) pursuant to CCC 33.49.530(1).

Only one alternative new tower location was considered in the Preference 2 area. It is shown on AR943 as the “R5 Test Location with 150ft Elevation.” It appears to have been purposefully selected to be an unsuitable choice. The 150-foot elevation refers to the antenna location on a new tower because it can be determined from AR464 and AR924 that ground elevation at the R5 Test Location is about 30-feet. A cell antenna at elevation 150-feet cannot see over the 150-foot high ridge where the subject property is located. (See AR944) DHH researched Preference 2 locations where tree cover is adequate and residences are not nearby and the transmission objectives of Radio Pacific and T-Mobile would be met. DHH reports at AR1436:

[AR1442] shows an example of one of the many sites with adequate room for a new cell tower that can also serve Sequim with 104.9 FM radio without interfering with the Vancouver 104.9 FM station. This site [Tax Parcel Number 033017420000 per AR1442] has mature trees as shown on [AR1443-45]. At the SE corner, the site elevation is over 150 feet and site is zoned R5 which is a Preference 2 area with maximum allowed tower height of 150-feet.

This site could accommodate Radio Pacific’s 104.9 FM antennas and multiple cell carriers and emergency services so that the neither the unbuilt

100-foot nor the proposed 150-foot tower would be necessary. The highest cell antenna would be at the $126 + 150 = 276$ -foot elevation that would be able see over a 150-foot ridge and would be able to provide excellent in-building coverage and more than adequate in-vehicle coverage without a tower height variance.

The Examiner's failure to discuss or apply CCC 33.49.410 in evaluating the proposed 150-foot tower caused the land use decision to be inconsistent with the zoning code and this Court should find that DHH has met its burden to show one of the standards in RCW 36.70C.130(1)(b) (error of law), (c) (no substantial evidence of application of CCC 33.49.410) and (d) (clearly erroneous application of the law) has been met. (*See* RCW 36.70C.130(1))

a. The Placement Of The Tower In Another Location Could Satisfy The Applicant's Objectives (Error No. 13(a))

In Para. 9 at CP149-50, the Examiner's Decision states that the proposed location "is necessary given that placement of the tower in another location would not satisfy the applicant's objectives." This conclusion is too broad to be supported and is not supported by findings or substantial evidence in the decision. The only evidence in the record that placement of a new tower in a Preference 2 location would not satisfy the applicant's objectives is the "purposefully selected to be an unsuitable choice" new tower shown on AR943 ("R5 Test Location with 150ft Elevation"). (*Supra* at 20) This is not substantial evidence that the placement of the tower in another Preference 2 location cannot meet the applicant's objectives. If the WCF was sited

consistent with CCC 33.49.410, reasonable Preference 2 alternatives would have been analyzed.

b. Co-Locating On The Proposed 150-Foot Tower Need Not Decrease The Number Of Future Towers (Error No. 13(b))

In Para. 10 at CP150, the Examiner's Decision states "that co-locating at this location with T-Mobile will decrease the number of future towers in Clallam County." This conclusion is not supported by findings or substantial evidence. If the Examiner's Decision did the priority site analysis required by CCC 33.49.410, the Decision would minimize future towers by using higher priority WCFs such as power pole replacements such as those already installed in the rural area and shown on AR939.

c. Approval Of The CUP Is Not Necessary To Minimize The Total Number Of Towers (Error No. 13(c))

In Para. 10 at CP150, the Examiner's Decision concludes that approval of the CUP is necessary to meet CCC 33.49.400(1)(a) "minimizing the total number of towers." This conclusion is not supported by findings or substantial evidence. Again by doing the priority site analysis required by CCC 33.49.410, variances can be avoided and towers can be minimized by encouraging use of higher priority options such as power pole replacements that are favored by the legislative body.

3. The CUP Approval Is Inconsistent With The Zoning Code Because The Tower Height Variance Is Not Valid (Error Nos. 3-5)

Without a valid tower height variance, consistency with the zoning code limits tower height to 100-feet in the NC zone (a Preference 3 area). (CCC 33.49.520(1)(b)(ii) and 33.49.400(2)) In the following section, DHH

will show that the tower height variance is not valid and so for this reason as well, the CUP approval is not valid because it is not consistent with the zoning code permitted tower height of 100-feet in this Preference 3 area. (CCC 33.49.520(1) and -(1)(b)(ii))

C. **This Court Should Find The Tower Height Variance Is Not Valid As Approved (Error Nos. 5-12 And 13(d), (e), And (f))**

This Court should find the tower height variance for increasing the allowed tower height from 100-feet to 150-feet is not valid as approved because of lack of compliance with local ordinance variance requirements. A variance permit may be lawfully granted only within the guidelines set forth in the zoning ordinance. (*Orion Corp. v. State*, 103 Wn.2d 441, 458-59, 693 P.2d 1369 (1985); *Ling v. Whatcom County Bd. of Adjustment*, 21 Wn.App. 497, 499, 585 P.2d 815 (1978))

1. **Seven Local Ordinance Criteria Must Be Met Or The Tower Height Variance Is Not Valid As Approved (Error Nos. 5-12 And 13(d), (e), And (f))**

As a preliminary issue, DHH will demonstrate that seven local ordinance criteria must be met for the Examiner to validly grant the applicant's requested variance to allow a 150-foot high cell tower when the relevant zoning code (CCC 33.49.520(1)(b)(ii)) limits new tower height to 100-feet in the Preference 3 area where the NC zone is located. The demonstration begins with CCC 33.49.200(1) which states:

The standards and process requirements of [chapter 33.49 CCC] shall supercede all conflicting requirements of all other codes and ordinances, except when conflicting requirements regarding protection of the environment arise, the more restrictive regulation shall apply.

The relevant regulation controlling WCF variances is CCC 33.49.530 Variances. The preamble states, "Requests for variance shall be made in accordance with the procedures and criteria specified in Chapter 33.30 CCC." This sentence directs the applicant to make his *request* for a variance following the procedures and considering the criteria specified in chapter 33.30 CCC (also referred to as CCC 33.30). The procedure for requesting a variance in CCC 33.30 is provided in CCC 33.30.010 which gives application requirements. The criteria specified in CCC 33.30 are four in number.

The standards and process requirements for Hearing Examiner approval of a variance in CCC 33.30 are superceded because they conflict with the standards and process requirements for WCF variance approval in CCC 33.49. (*See CCC 33.49.200(1), supra*) One conflict is that approval under CCC 33.49 requires consideration of three additional criteria. Given this conflict, the local ordinance requirements for Hearing Examiner approval of a WCF variance is governed only by:

In the granting of a variance, the Hearing Examiner shall also find, in addition to the [four criteria specified in CCC 33.30], the following:

- (1) Strict adherence to the provisions of this chapter will result in an inability of the applicant to provide adequate in-vehicle services within Clallam County;
- (2) The granting of the variance will not adversely affect views from designated scenic highways or areas of historic or cultural significance; *and*
- (3) As may be applicable, strict adherence to the screening provisions specified in CCC 33.49.520 is not possible due to the lack of tree cover on the parcel and provided that other aesthetic provisions, including camouflage techniques, have been utilized.

(CCC 33.49.530 (emphasis on “and” supplied) Therefore, to grant a WCF variance, the Examiner must find all seven criteria discussed above are met.

All of these criteria are applicable only to what is called an “area” variance.

An area variance is one which does not change the specific land use but provides relief from dimensional requirements such as setback, yard size, lot coverage, frontage or height restrictions.

(*City of Medina v. T-Mobile USA, Inc.*, 123 Wn.App. 19, 30 Note 30, 95 P.3d 377 (2004)) Clallam County Code forbids “use” variances. (CCC 33.30.020)

The Examiner did find that all seven local ordinance criteria were met and then granted the WCF tower height variance. (CP153-58) If this Court finds that DHH meets its burden under RCW 36.70C.130(1) and shows that even one of the seven criteria is not met, then this Court should reverse approval of the tower height variance.

2. This Court Should Find That The Tower Height Variance Requirement In CCC 33.30.030(1) Is Not Met (Error Nos. 5, 6, 7, 11, 12, And 13(d))

This Court should find that the tower height variance requirement in CCC 33.30.030(1) is not met:

That because of special circumstances applicable to subject property including size, shape, topography and location, the strict application of this regulation would deprive subject property owner of rights and privileges enjoyed by other property owners in the vicinity and within the same zone as set forth in the official zoning map;

(CCC 33.30.030(1)) It is a question of law under RCW 36.70C.130(1)(b) as to what is the nature of the relief that can be granted under this regulation. Issues under RCW 36.70C.130(c) and (d) are raised in determining that CCC 33.30.030(1) is not met.

- a. Relief Under CCC 33.30.030(1) Is Limited To Adjustment Of A Regulation That With Strict Application Deprives The Subject Property Owner Of Rights Or Privileges Enjoyed By Neighboring Property Owners In The Same Zone (Error Nos. 5, 6, 7, 11, 12, And 13(d))

Relief under CCC 33.30.030(1) is limited to adjustment of a regulation that with strict application deprives the subject property owner of rights or privileges enjoyed by neighboring property owners in the same zone. DHH uses the word “neighboring” to substitute for “in the vicinity.”¹² CCC 33.30.030(1) does not allow adjustment of a regulation that with strict application does *not* deprive the subject property owner of rights or privileges enjoyed by neighboring property owners in the same zone. The land use decision misinterprets and/or misapplies this legal requirement when it adjusts the tower height regulation when that regulation does not deprive the subject property owner of rights or privileges enjoyed by neighboring property owners in the same zone. This Court should reach this conclusion whether it determines that the language in CCC 33.30.030(1) is unambiguous or ambiguous.

- i. Determining If An Ordinance Is Unambiguous Or Ambiguous

DHH discusses unambiguous regulations *supra* at 12-13. Local ordinances are interpreted in the same way that Courts interpret statutes and if the ordinance is unambiguous, the ordinance is given its plain meaning

¹² CCC 33.30.030(1) uses the term “in the vicinity.” The word “vicinity” is not defined in CCC 33.30. “An undefined term in a statute will be given its usual and ordinary meaning, and the court may use a dictionary definition to determine the usual and ordinary meaning of the term.” (*Habitat Watch v. Skagit County*, 155 Wn.2d 397, 423, 120 P.3d 56 (2005)) The dictionary defines “vicinity” to include “neighborhood.” (Webster’s Encyclopedic Unabridged Dictionary (2001))

without interpretation. (*Supra* at 13-14; *Griffin v. Thurston County*, 165 Wn.2d 50, 55, 196 P.3d 141 (2008)) When an ordinance is unambiguous, no deference is given to an Examiner's interpretation. (*Supra* at 13-14; *Griffin* at 58 Note 3 (2008)) The Court construes a statute to avoid absurd results. (*Jespersen v. Clark County*, 48653-9-II (July 5, 2017) (Published))

A court's objective in construing a statute is to determine the legislature's intent. If the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent. A statutory provision's plain meaning is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole. A provision that remains susceptible to more than one reasonable interpretation after such an inquiry is ambiguous and a court may then appropriately employ tools of statutory construction, including legislative history, to discern its meaning.

(*Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.3d 1020 (2007) (citations omitted))

ii. CCC 33.30.030(1) Is Unambiguous

CCC 33.30.030(1) is unambiguous regarding the nature of the relief that can be granted under this regulation. As a prerequisite to getting relief, a subject property owner seeking a variance must show that relief is needed "because of special circumstances applicable to subject property including size, shape, topography and location." (CCC 33.30.030(1)) As another prerequisite to getting relief, a subject property owner seeking a variance must show that these special circumstances deprive them "of rights and privileges enjoyed by other property owners in the vicinity and within the same zone as set forth in the official zoning map." (CCC 33.30.030(1)) But then, the relief allowed must only be adjustments to regulations, when strictly applied, deprive the subject property owner of such rights and/or privileges.

Any other reading of the relief allowed by CCC 33.30.030(1) would reach an absurd result. “The outcome of plain language analysis may be corroborated by validating the absence of an absurd result.” (*Tingey v. Haisch*, 159 Wn.2d 652, 664, 152 P.3d 1020 (2007))

For example, consider a ten-acre parcel in the R5 (Rural Low) zone in Clallam County. Assume the rear 5 acres of the parcel are an unbuildable critical area with buffers. Assume there are neighboring properties in the same zone that are non-conforming 1/4 acre parcels without unbuildable critical areas where there is “full use” of these parcels for a home, outbuildings, driveways, and landscaping. Consider that the argument is made that the subject property is denied such a “full use” right or privilege because the subject property owner cannot put those uses in their 5-acre unbuildable critical area. Consider that the variance requested based on these facts is to increase the size of a stand-alone sign advertising the subject home enterprise from the 6 sq ft allowed by CCC 33.47.010(7) to 50 sq ft.

It would be an absurd result to construe CCC 33.30.030(1) to allow such a sign size variance. The relief requested, adjustment of the strict application of the sign size ordinance, is unrelated to the claimed “full use” privilege on neighboring properties and unrelated to the special circumstances. The strict application of the sign size ordinance would not “deprive subject property owner of rights and privileges enjoyed by other property owners in the vicinity and within the same zone as set forth in the official zoning map.” (Quote from CCC 33.30.030(1)) The only reading of CCC 33.30.030(1) that does not produce an absurd result is that the relief allowed must only be adjustments to regulations, that when strictly applied,

“would deprive subject property owner of rights and privileges enjoyed by other property owners in the vicinity and within the same zone as set forth in the official zoning map.” (Quote from CCC 33.30.030(1))

- iii. Even If CCC 33.30.030(1) Were Found To Be Ambiguous, This Court Should Reach The Same Result Regarding The Nature Of Relief Allowed

CCC 33.30.030(1) is presumed valid. *Filo Foods, LLC v. City of SeaTac*, 183 Wn.2d 770, 793, 357 P.3d 1040 (2015). It would be found invalid only if it directly and irreconcilably conflicts with state law. (*Id.*) A Court must try to harmonize local ordinances with state law to avoid conflict. (*Id.*)

The Clallam County zoning code and Hearing Examiner system are adopted under the authority of the Planning Enabling Act (Chapter 36.70 RCW) and under other authorities not herein relevant. (CCC 31.01.100; CCC 26.04.010) Therefore, Clallam County zoning ordinances must not conflict with the Planning Enabling Act or they would be invalid. Under the Planning Enabling Act a variance is defined as:

the means by which an adjustment is made in the application of the specific regulations of a zoning ordinance to a particular piece of property, which property, because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the same vicinity and zone and which adjustment remedies disparity in privileges.

(RCW 36.70.020(14) - emphasis supplied) The dictionary definition of “disparity” is “inequality”. (*see supra* at 26 Note 12) CCC 33.30.030(1) would be in conflict with RCW 36.70.020(14) if the ordinance was interpreted to allow an adjustment to a regulation if the adjustment did not

remedy the inequality in those privileges that are “commonly enjoyed by other properties in the same vicinity and zone.” Therefore CCC 33.30.030(1) can only be harmonized with RCW 36.70.020(14) if relief under the ordinance is limited to adjustment of a regulation that with strict application deprives the subject property owner of rights or privileges enjoyed by neighboring property owners in the same zone. This is the same result reached under the plain language analysis of CCC 33.30.030(1). (*Supra* at 27-29)

This result is supported by the similar language that applies to variances granted by a code city and which requires:

That such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located

(RCW 35A.63.110(2)(b)). This statute makes it clear that the adjustment is to provide the subject property with use rights and privileges of neighboring properties in the same zone. There is no basis to conclude that the legislature intended the relief allowed by a variance to be different in a code city or in a county.

- b. The Requirements of CCC 33.30.030(1) Are Not Met Because The Relief Granted Was Not Limited To Adjustment Of A Regulation That With Strict Application Deprives The Subject Property Owner Of Rights Or Privileges Enjoyed By Neighboring Property Owners In The Same Zone (Error Nos. 5, 6, 7, 11, 12, And 13(d))

The requirements of CCC 33.30.030(1) are not met in the instant case because the relief granted to the subject property owner was not limited to

adjustment of a regulation that with strict application deprives the subject property owner of rights or privileges enjoyed by neighboring property owners in the same zone. The actual situation is very similar to the Example provided *supra* at 28-29.

The Examiner's Decision addresses CCC 33.30.030(1) at CP154, Para. 16. The Decision finds that the rights and privileges enjoyed by other homeowners in the vicinity are that they "are able to develop their entire property, while the subject property owner is [sic] cannot due to the shape, topography, and location of the property." Even if the ability "to develop their entire property" were a valid description of a right or privilege that the subject property is deprived of (which it is not), the relief requested to "Increase allowed cell tower height from 100' to 150" (CP35), like the request in the Example to increase the size of the sign (*supra* at 28-29) is not an adjustment of the regulation that with strict application deprives the subject property owner of the right or privilege "to develop their entire property."

In the instant case, the relief to the subject property owner allows replacement of an already permitted 100-foot WCF tower with a 150-foot WCF tower and the extra 50-feet of tower height is unrelated the alleged neighbors' privilege "to develop their entire property." The Examiner's Decision that the requirements of CCC 33.30.030(1) are met is a misinterpretation and misapplication of this ordinance such that DHH has met its burden to show the standards in RCW 36.70C.130 (b) and (d) are met.

- c. The Alleged Right or Privilege Of Neighbors
“To Develop Their Entire Property” Is Not A
Valid Right or Privilege For This Variance
Analysis (Error Nos. 5, 6, 7, 11, 12, And
13(d))

The alleged right or privilege of neighbors “to develop their entire property” is not a valid description of a right or privilege for this variance analysis.

- i. All Residential Properties In The Same Zone Have The Same Rights To Full Use Of Their Parcel Subject To Restrictions For Critical Areas, Easements, and Setbacks

All residential properties in the same zone have the same rights to full use of their parcel subject to restrictions for critical areas, easements, and setbacks. Both the subject property and the neighboring properties have this same right and privilege. The neighboring properties do not have the right “to develop their entire properties” any different than the right of the subject property in that for all properties this right is subject to critical areas restrictions, and the effects of easements and setbacks.

AR62 shows that more than half of the subject property is in a landslide hazard critical area and its buffer. It is possible to do development in a landslide critical area and its buffer by either a certificate of compliance or variance. (CCC 27.12.405)

- ii. The Examiner’s Decision Misinterprets *St. Clair v. Skagit County*, 43 Wn.App. 122, 715 P.2d 165 (1986)

The Examiner’s Decision misinterprets *St. Clair v. Skagit County*, 43 Wn.App. 122, 126, 715 P.2d 165 (1986) which found that the “reasons for a

variance must be reasons pertaining to the property itself which prevent full use of the property to the extent other properties in the vicinity and under the same zoning can be used.” (CP 154, Para. 16) The Examiner’s Decision equates “full use” in *St. Clair* with the concept that it is a neighbors’ right or privilege to be “able to develop their entire property.” (*Id.*) The Examiner’s Decision looks to the developed 1/4-acre parcels in the Dungeness Heights subdivision and concludes that some appear to have developed their entire properties. (See AR211) The Decision then applies that concept of “full use” of neighboring 1/4-acre parcels to find that the subject 9⁺-acre parcel is being deprived of “full use.” This is a misinterpretation or misapplication of the law. *St. Clair* states “full use of the property to the extent other properties in the vicinity and under the same zoning can be used.” (*St. Clair* at 126) The “full use” on the 1/4-acre parcels was limited to 1/4 acre of development and so the 9⁺-acre parcel would have equal “full use” if there was room for 1/4-acre of development. Even under the worst case analysis in AR970 the subject property has room for full development use of at least 1/4 acre. (AR971). There is already an additional 1-acre use shown on AR970 in blue for the required buffer for the 100-foot WCF tower.

It is absurd to find that “full use” of neighboring 1/4-acre parcels creates a privilege to have a similar intensity of development all over a 9-acre parcel. AR211 shows that none of the parcels one acre or larger in the neighborhood have such full development. The “commonly enjoyed” extent of development (using language from RCW 36.70.020(14)) is about 1/4-acre on large and small lots alike. (AR211)

- iii. *St. Clair v. Skagit County*, 43 Wn.App. 122, 715 P.2d 165 (1986) Agrees With The Dissent In *Sherwood v. Grant Cy.*, 40 Wn.App. 496, 699 P.2d 243 (1985) That A Variance May Not Be Justified By Non-Conforming Uses

St. Clair v. Skagit County, 43 Wn.App. 122, 128, 715 P.2d 165 (1986) agrees with the dissent in *Sherwood v. Grant Cy.*, 40 Wn.App. 496, 504, 699 P.2d 243 (1985) that a variance shall not be justified by non-conforming uses. The minimum lot size in the NC zone is 1.0-acre and the maximum density for a subdivision is 1 house per 5-acres. (CCC 33.10.015(5) and (6)) The 1/4-acre lots in the Dungeness Heights Subdivision were vested before the zone was changed to NC. Under *St Clair*, the Examiner's Decision should not be allowed to use "full use" of 1/4-acre non-conforming lots to justify a privilege of similar intensity of "full use" for a 9-acre parcel. The record shows that there are no conforming lots (1.0-acre or larger) in the vicinity and same zone that have "full use" equivalent to the intensity found on the 1/4-acre nonconforming lots. (AR211) That level of use is certainly not commonly enjoyed on conforming lots. (*Id.*)

In *St. Clair*, Meamber bought an undeveloped 50-foot wide lot and then bought an adjacent 50-foot wide lot with a residence. (*St. Clair* at 123) Skagit County required a minimum lot width of 75-feet and had an ordinance that automatically combined substandard width adjacent lots when they came into the same ownership. (*Id.* at 123-24) Meamber sought a building permit for a mobile home on the undeveloped 50-foot wide lot but was required to seek a variance. (*Id.* at 124) The *St. Clair* Court rejected the variance because the special circumstances were personal and did not relate to the

property and because it would be a special privilege for the variance to create 50-foot lots because they would not have non-conforming status. (*Id.* at 126-27) The *St. Clair* Court found that privileges of non-conforming lots could not be used to justify a variance. (*Id.* at 127-28)

The *St. Clair* Court said that to the extent that *Sherwood v. Grant Cy.*, 40 Wn.App. 496, 699 P.2d 243 (1985) allowed a variance based on neighboring non-conforming uses, the *St. Clair* Court declined to follow. (*St. Clair* at 128) *Sherwood* was a 2 to 1 decision with the dissent finding a variance could not be based on neighboring non-conforming uses. (*Sherwood* at 504)

DHH requests this Court to follow *St. Clair* and the dissent in *Sherwood* and find that privileges on non-conforming lots may not be the basis for granting a variance. As stated in *St. Clair* at 128:

If Meamber were granted a variance because substandard properties near hers are developed, the [County] would be bereft, it seems, of valid grounds upon which to deny such applications in the future.

This Court should rule that the tower height variance may not rely on non-conforming uses to meet variance criteria.

- d. The Right Associated With Having A 150-Foot WCF Tower In The NC Zone Does Not Reflect A Right That Any Neighboring Property Has (Error Nos. 5, 6, 7, 11, 12, And 13(d))

Tjemsland is not precluded by the zoning code from having full use of her property to the extent that neighboring properties can be used. There is no evidence, let alone substantial evidence as required by RCW 36.70C.130(1)(c), that there is any specific right or privilege enjoyed by

neighboring properties that cannot be enjoyed by Tjemsland on her Lot 4 because of lot size, shape, topography, or location. Tjemsland seeks to put radio and cellular antenna arrays at an elevation that is more than the allowed 100-feet above the top of the ridge in this NC-zoned Preference 3 neighborhood. There is no evidence that this reflects a right or privilege “enjoyed by other property owners in the vicinity and within the same zone” as required by CCC 33.30.030(1).

Other neighboring properties in the same zone have a right to have a WCF tower that is 100-feet tall by CUP. The RPI tower is at the top of the ridge so no one in the neighborhood can have a tower with higher absolute elevation. So there is no privilege associated with WCF towers that neighboring property owners have that the subject property does not have.

The neighboring lots have one house, outbuildings, driveways, landscaping, and the larger parcels have woodlots. The subject 9⁺-acre parcel can also have one house as large as any in the neighborhood; can have outbuildings as large as any in the neighborhood; can have driveways as big as any in the neighborhood, and can have as much landscaping as any lot has in the neighborhood. There can be no valid showing that the subject parcel cannot accommodate any use that is actually enjoyed in the neighborhood. This should preclude the granting of this variance.

Holberg v. City of Bellevue, 76 Wn.App. 357, 884 P.2d 1339 (1994) gives a proper situation where special circumstances exist that justify a variance. Holberg purchased a small nonconforming triangular vacant lot that had, with standard setbacks, only a 624 sq. ft. triangle as buildable area. (*Holberg* at 358-59) Without a variance, the owner could build a narrow 3-

story tower, inconsistent with the character of surrounding houses. (*Id.*) The owner requested a 10-foot reduction in the rear yard setback that would double the buildable area on the lot. (*Id.*) The Board of Adjustment agreed with Holberg that the following Bellevue criterion for a variance was satisfied:

The variance is necessary because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property to provide it with use rights and privileges permitted to other properties in the vicinity and in the Land Use District in which the subject property is located.

(*Id.*; Former Bellevue Land Use Code (“BLUC”) 20.30G.140B)¹³ There was also a statutory requirement in RCW 35A.63.110(2)(b) requiring a finding:

that such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located.

The Board of Adjustment denied the variance on other grounds and the *Holberg* Court reversed the denial and required the Board to issue the variance. (*Holberg* at 359-63)

The Administrative Record shows great opposition to this tower height variance in the NC zone in the Preference 3 area. Opposition is expressed in 44 individual Hearing Examiner Exhibits and a 45th Exhibit gives names and addresses of 209 Clallam County citizens who oppose this proposal. (CP58:10-18) Besides support expressed by RPI and its agents, support is expressed in only 5 Exhibits. (CP58:17-19) In the RP of the

¹³ Appendix D hereto is the relevant portion of former BLUC 20.30G.140 in effect when Holberg applied for his variance.

Examiner's hearing, 23 express opposition and, besides RPI and its agents, only one person expresses support. (CP58:20 to CP59:5)

This overwhelming opposition to a WCF tower height variance in the NC zone and Preference 3 area and confirms the importance of the wisdom of the overall purpose of the WCF zoning Chapter 33.49 CCC:

Purpose. In recognizing the value of the visual and aesthetic resources of Clallam County to its residents and visitors as well as the importance of preserving private property values, the purpose of this chapter is to provide guidance for siting and development of wireless communications facilities (WCFs).

(CCC 33.49.100(1)) Several people expressed concern that an approval of this variance would open the door to more WCF tower height variances in the NC zone and in the Preference 3 area. (RP71:22 to RP72:7; RP74:17-21) These people had the same concerns that were expressed by the *St. Clair* Court that if the County granted this variance, it would not be able to deny such variances in the future. There is major opposition to setting a precedent for allowing tower height variances in the whole Preference 3 area. This would be destructive to the County's zoning objectives to protect the Preference 3 area. The overall goal regarding WCFs is CCC 33.49.100(2):

While remaining consistent with the provisions set forth in the Federal Telecommunications Act of 1996, the overall goal of this chapter is to protect visual and aesthetic features of Clallam County. These features are vitally important to the welfare and interests of County residents, and to the health of the County's tourism industry.

3. This Court Should Find That The Tower Height Variance Requirement In CCC 33.30.030(4) Is Not Met (Error Nos. 5, 8, 11, And 12))

This Court should find that the tower height variance requirement in CCC 33.30.030(4) is not met:

That approval of the variance will not constitute a grant of special privilege.

(CCC 33.30.030(4)) The term "special privilege" is not defined in Clallam County Code:

When a term has a well-accepted, ordinary meaning, a regular dictionary may be consulted to ascertain the term's definition. When a technical term is used in its technical field, the term should be given its technical meaning by using a "technical rather than a general purpose dictionary" to resolve the term's definition.

(*Tingey v. Haisch*, 159 Wn.2d 652, 658, 152 P.3d 1020 (2007) (citations omitted)) In this case, "special privilege" is a term of law and so the Examiner was correct in using Black's Law Dictionary, 554 (2nd Pocket Ed. 2001):

A "special privilege" is "[A] privilege granted to a person or class of person to the exclusion of others and in derogation of the common right."

Here the privilege is to have a 150-foot WCF tower on the high point of a ridge in the Preference 3 area where the maximum allowed tower height is 100-feet. (CCC 33.49.520(1) and -(1)(b)(ii)) The common right is to follow the code and limit maximum tower height to 100-feet. It is in derogation of the common right to allow a 150-foot WCF tower when others following the common rule are limited to a 100-foot tower. So the issue before this Court is whether the privilege is being granted to RPI "to the exclusion of others." DHH will show that it meets the standards in RCW 36.70C.130(1)(b), (c), and (d) on this issue.

The Examiner's Decision is in error when it concludes that granting this variance is not a special privilege. The Examiner finds that there are 7 WCF towers in Preference Areas 2 and 3 that were established through CUPs

issued prior to 2001. (CP155, Para. 19) That is accurate and these seven are shown on AR1140. When Chapter 33.49 CCC was adopted on January 23, 2001 by Ordinance 703 (and effective 10 days later), the Ordinance set the current tower height limit of 100-feet in Preference area 3 and 150-feet in Preference area 2. All of the seven towers listed on AR1140 are taller than the code limits and so they all became non-conforming uses.

The St. Clair Court at 127 states:

Generally, there are restrictions on nonconforming uses, such as limitations on expansion and change and the possibility that they will be found to have been abandoned if their use is not continuous.

The Clallam County Code has such restrictions. If a non-conforming use ceases, the non-conforming use right is lost after 18 months. (CCC 33.43.120) Also if fixing damage costs more than 50% of replacement costs, the non-conforming use right is lost. (CCC 33.43.080)

This Court should rule that the tower height variance may not rely on non-conforming uses to meet variance criteria. (*Supra* at 34-35) The Examiner's Decision errs under (b) and (d) when it concludes that the purpose of a variance is to create a non-conforming use:

If the purpose of the code was to prevent all non-conforming WCF uses in Preference Areas 3, then it would not have included a procedure for obtaining a variance.

(CP155, Para. 19) The County zoning code defines a nonconforming use or structure as follows:

"Nonconforming use or structure" means a lawful structure or use existing at the time this title or any amendment thereto becomes effective, which does not conform to the requirements of the zone in which it is located.

(CCC 33.03.010(73)) Therefore to become nonconforming, the zoning code must change after the use or structure is lawfully established such that with the zoning code change, the use or structure is no longer conforming. Because the code has not changed since the variance and conditional use permit were approved, the structure remains conforming and is not nonconforming.

Structures or uses having the benefit of a variance conform with the ordinance or bylaw by virtue of the variance. They are not subject to the provisions governing lawful non-conforming uses or structures, but are instead subject to the conditions, if any, upon exercise of the variance. Changes in the ordinance or bylaw after the structure or use is established pursuant to the variance, with which the structure or use does not comply, will render the structure or use lawfully non-conforming. The conditions, if any, limiting exercise of the variance continue to affect the structures or use.

(68 MBA Law Rev. 154, 166 (Note 93) (1983) (citations omitted) - this document is found on Casemaker in an "all states" search for "68 MBA Law Rev. 154") *St. Clair* at 127 found granting a variance based on non-conforming uses would be a "special privilege". This Court should find, DHH has met its burden under (b), (c), and (d) on this issue.

4. This Court Should Find That The Tower Height Variance Requirement In CCC 33.49.530(1) Is Not Met (Error Nos. 5, 9, 11, And 12))

This Court should find that the tower height variance requirement in CCC 33.49.530(1) is not met:

Strict adherence to the provisions of this chapter will result in an inability of the applicant to provide adequate "in-vehicle" services within Clallam County.

(CCC 33.49.530(1)) DHH requests that this Court construe this requirement. The Examiner's Decision misinterprets and misapplies this requirement in concluding that it is satisfied for the tower height variance. There is not

substantial evidence that T-Mobile would be unable to provide adequate “in-vehicle” services without the tower height variance.

DHH construes this requirement such that T-Mobile has the right to seek to provide more in-building service (light green and yellow per AR 1228 on AR 1222) but if it can provide adequate “in-vehicle” services without a variance, it may not use a variance to provide in-building service. Because T-Mobile either has or can provide adequate “in-vehicle” services or better without the tower height variance, CCC 33.49.530(1) is not satisfied and the approval of the tower height variance must be reversed.

“In-vehicle” service shall refer to the level of service which provides for the transmission of telecommunications signals to and from vehicles. This level of service shall extend to all *urban areas, major and minor arterials and major collectors* within the Clallam County roads system.

(CCC 33.49.300(16) (emphasis supplied)) Existing in-vehicle service coverage for T-Mobile is shown in light blue on AR1222. (AR1228) Areas with in-building services (light green and yellow on AR 1222) have superior in-vehicle coverage.

The Examiner concludes that with the tower height variance there will be “adequate in-vehicle services.” (CP156) The record shows that the service provided with the tower height variance could also be provided by 3 power pole replacements. (AR933; AR938) Therefore, “strict adherence to the provisions of this chapter” will *not* “result in an inability of the applicant to provide adequate ‘in-vehicle’ services” because T-Mobile can use power pole replacements to provide such adequate services. Therefore the Examiner’s Decision misinterprets or misapplies the law at CP155-56, Para. 20, when it finds CCC 33.49.530(1) is satisfied. There is also not substantial

evidence in the record that T-Mobile is unable to provide adequate in-vehicle services using power pole replacements or other WCFs that are higher priority under CCC 33.49.410 than a new 150-foot tower in Preference Area 3.

As previously discussed, the land use decision failed to do the evaluation required by CCC 33.49.410. (*Supra* at 17-22) In light of CCC 33.49.530(1), the analysis required by CCC 33.49.410 needs to address provision of adequate in-vehicle services.

The Examiner claims that “T-Mobile” provided reports “that show a height of 135 feet is necessary to provide adequate in-vehicle services.” (CP156)) This claim is not supported by substantial evidence because neither T-Mobile nor the Examiner defines what is “adequate” when multiple WCFs are serving the same area such as on AR1222. The Examiner claims that these studies show coverage would be somewhat blocked with a height of 90 feet and cites to numbers (78.28% and 26.5%) for population covered. (*Id.*) These coverage numbers (78.28% and 26.5%) are not coverage numbers for “in-vehicle” service (as the Decision implies) but rather are coverage numbers for “in-building residential” service. (AR1232 highlighted in yellow) The T-Mobile objective is to provide more in-building service (light green and yellow on AR1222).” (AR1214 (“without a [150-foot height] variance . . . T-Mobile will not be able to achieve **its objective to provide in-building coverage**”) (emphasis supplied))

T-Mobile and the Examiner only address adequate in-vehicle services in conclusory statements that the Examiner does not support with Findings

and that are not supported by substantial evidence. This Court should find that CCC 33.49.530(1) is not met and this Court should reverse the variance approval.

5. This Court Should Find That The Tower Height Variance Requirement In CCC 33.30.030(2) Is Not Met (Error Nos. 5, 10, 11, 12, And 13(e) and (f))

This Court should find that the tower height variance requirement in CCC 33.49.530(2) is not met:

That the granting of the variances will not be materially detrimental to the public health or injurious to property or improvements thereon;

(CCC 33.30.030(2)) The proposed overheight variance will be injurious to property values, and therefore injurious to property, for properties that have high-end homes in close proximity to the proposed 150-foot cell tower and so the criterion in CCC 33.30.030(2) is not met. Because CCC 33.30.030(2) is not met, the variance approval should be reversed.

The Examiner's Decision addresses the impact on property value in the first paragraph on CP151 where he states that the applicant provided appraisal data that WCFs did not have an effect on property values in the Sequim-Dungeness area. The Examiner's Decision at CP155 then concluded that the proposal will not be "injurious to property.

The Examiner's Decision on this issue does not meet the smell test. But because that is not one of the standards in RCW 37.70C.130(1), DHH will address the Decision as one that is not supported by substantial evidence under standard (c). But first, DHH observes that the Examiner misinterpreted the law under standard (b) by not referencing the first paragraph on CP151

in the Decision's analysis of CCC 33.30.030(2) in Para. 17 on CP154-55. And the Examiner misapplied the law under standard (d) because although there is some evidence to support the Examiner's conclusion, this Court should reach a definite and firm conviction that a mistake has been committed. The proposal puts a 150-foot (15-story) plastic radio/cell tower fake tree a few hundred feet from high-end homes worth about half a million dollars (AR496) and the Examiner concludes that this will not negatively impact the property values of these homes.

This Court should find that the three appraisals that the Examiner relied upon in the first paragraph of CP151 are not substantial evidence when viewed in light of the whole record before this Court such that standard (c) is met. The first appraisal for 1772 Melody Lane is for a house with no view near two radio-only towers in a low-end neighborhood nearly 20 miles away from the subject property. (AR1456-63) The house was appraised at \$170,000. (AR1459) The effective date of the appraisal was 12-10-15. (AR1263) The home sold for \$167,500. (AR1459)

The second appraisal was for Tjemsland's Lot 3 adjacent to the subject property. (AR1464-70) The effective date of the appraisal was 8-12-15. (AR1470) This appraisal was prior to 8-26-15 when the 100-foot tower was approved. (AR1531) It provides no information about the effect of a tower on house values.

The third appraisal was for Tjemsland's Lot 4, the subject property. (AR1476-83) It does not have a house and so it provides no information about the effect of a tower on house values. The signing date for this appraisal was 2-25-15. (AR1474) There is a Supplemental Addendum to the

third appraisal at AR1479 signed 1-18-16 after the CUP for the 100-foot tower was approved. The Supplement Addendum found the tower approval had no affect on the original appraisal.

The only appraisal in the RPI appraisal package that gives any information on impact on value for a view property with a high-end home is the appraisal for 1772 Melody Lane that is for a non-view property with a low-end home in an area 20 miles away from the subject property. This property sold \$2,500 (1.5%) below its appraised value.

The three comparables used in the 1772 Melody Ln. appraisal included a house at 1826 Melody Ln. (AR1459) This house is 0.06 miles (300-feet) away from 1772 Melody Ln. (AR1459) So the sale price of this house already includes the negative property value impact of the nearby towers. The adjusted sales price of the other two comparables that were about 1 mile from the towers are \$173,108 and \$171,479 with an average of \$172,294. (AR1459) If this reflects a more accurate appraised value for 1772 Melody Ln. without towers, then the negative impact of the towers would be \$172,294 minus the sales price of \$167,500 which is \$4,794, a loss of 2.8%. Whether the loss is \$2,500 as the appraisal found or \$4,794 when the house next door is not included in the appraisal, this is the only piece of data provided by RPI and relied upon by the Examiner and it shows a negative impact on home value to have nearby towers.

Under standard (c), this Court asks the question whether a fair-minded person would be persuaded by this appraisal for a low-end non-view home 20 miles away from the subject property that the 150-foot tower will have no negative impact on the value of high-end view homes a few hundred feet

away from this proposed tower. This question is to be answered “when viewed in light of the whole record before the Court.” (RCW 36.70C.130(1)(c)) DHH asks this Court to find that this one appraisal is not persuasive.

DHH summarized the rest of the “whole record before the Court” in its Opening Brief to the trial court. The negative impact from loss of private property home values was explicitly raised at RP39, RP42, RP48-49, RP56-57, RP73, RP75, RP81-82, and RP90 and also in H.E. Exhibits 21, 22, 25, 26, 27, 29, 31, 32, 42, 52, 58, 67, 78, 86, and 92. (CP59:16-19) The AR pages numbers for H.E. Exhibits are provided at AR94-99. As an example, Mike Erwin commented to the Examiner:

The blight, an eyesore will be there forever. All property owners in the neighborhood will be suffering huge economic losses caused by this monolith tower.

(RP56:18-20)

Diane Hood spoke as an expert witness at the Hearing and stated she is a retired real estate agent who sold homes for ten years in California and Washington. (RP48:24 to RP49:12) Under the Rules of Evidence that qualifies her as an expert on residential real estate valuation. (Rule ER 702) She provided documentation including CP123-24 that she considered when forming her opinion (AR403-08; AR1405) and she testified “I know that installing a cell tower at this location will reduce the value of the homes nearby.” (RP49:3-4) Ms Hood states:

I sold Real Estate for 10 years and I know that a cell tower in the neighborhood will reduce the value of my home. What is in the near proximity of your home does affect the value. When I bought this home in 2010 I chose this home over a similar home on Eunice in Sequim because that home was near a cell tower.

(AR405; RP48:24 to RP49:20)

CP123-24 provide strong evidence there will be property value losses for homes near cell towers. The peer-reviewed *The Appraisal Journal* published a paper in 2005 that analyzed sales data and found when a cell tower was built in a neighborhood, property prices plunged 21% for homes 900 feet or less from the tower. (CP123) The paper also reported on a survey that found people would pay from 10% to more than 20% less for homes in close proximity to a cell tower. (*Id.*)

The Examiner responded to this study by stating:

The article is over ten years old and does not provide area specific evidence of a decrease in property values in the area of the proposed WCF. Since the date when the article was published, vast improvements have been made in camouflage technology. The number of WCF's and the public's opinion regarding them has also undoubtedly changed.

(CP151) But also on same page (CP123), apparently not read by the Examiner, are results from the National Institute for Science, Law and Public Policy survey "*Neighborhood Cell Towers and Antennas - Do They Impact a Property's Desirability?*" This survey was done in June, 2014, just 18 months before the Examiner's hearing. (CP123) The Examiner was correct that the public's opinion had changed in 10 years. Now, even more people want to avoid cell towers. In this survey, 79% said under no circumstances would they ever purchase or rent a property within a few blocks of a cell tower or antennas. (CP123) 94% said a nearby cell tower or group of antennas would negatively impact their interest in a property and the price they would be willing to pay for it. (*Id.*)

A New York Times August 27, 2010 article, *A Pushback Against Cell Towers*, includes statements from associate brokers that cell antennas and towers near homes affected property values:

“You can see a buyer’s dismay over the sight of a cell tower near a home just by their expression, even if they don’t say anything.” . . . “People don’t like living next to cell towers for medical reasons or aesthetics . . . they don’t want that eyesore sticking up in their backyards.”

(CP124) Another real estate appraiser expert testified in court that “the property value of the house with a view of the tower was 10.7% less than it would be if the tower did not exist.” (*Id.*)

DHH asks this Court to find the Examiner’s conclusion of no injury to property values for high end view homes within a few hundred feet of this 150-foot tower is clearly erroneous under (d) (“mistake has been made”).

6. Errors In CP156, Para. 23 (Error Nos. 1-12 And 13(a) to (f))

In CP156, Para. 23, the Examiner’s Decision concludes that the applicant has satisfied the [seven criteria] for a height variance. This Brief shows why four of those criteria are not met. The Examiner then misinterprets the law under (b) when citing to *City of Medina v. T-Mobile USA, Inc.*, 123 Wn.App. 19, 26, 95 P.3d 377, 380 (2004) for justification in “weighing the costs and benefits of approval” of the CUP and variance permits. But the Medina Code (“MCC”) has explicit language governing only variances that authorizes such weighing so “the spirit of the ordinances will be observed.” (*City of Medina* at 125) The Clallam Code has such specific language only in one specific variance criteria, CCC 33.30.030(3).

The Examiner is only authorized to do such weighing in determining if CCC 33.30.030(3) is satisfied and that weighing was not challenged by DHH.

VI. REQUEST FOR COSTS

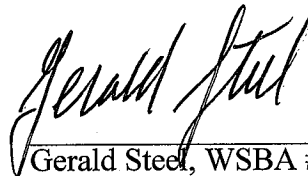
If this Court gives relief, DHH asks for costs including statutory attorney fees in consideration of all of the work done in this Appeal.

VII. CONCLUSION

The Examiner's approval of the tower height variance and CUP should be found invalid. The tower height variance should be invalidated because DHH has met its burden under RCW 36.70C.130(1)(b), (c), or (d) to show that at least one of the following required variance criteria is not satisfied: CCC 33.30.030(1), -(2), -(4), and CCC 33.49.530(1). The CUP should be invalidated under the same standards because DHH has shown at least one of the following: the tower does not meet the setback requirement in CCC 33.49.520(2); the land use decision is inconsistent with the zoning code because of a failure to implement CCC 33.49.410; this Court finds the tower height variance invalid. DHH requests statutory attorney fees and costs and such other relief as this Court finds just and equitable.

Dated this 10th day of August, 2017.

Respectfully submitted,



Gerald Steel, WSBA #31084
Attorney for Appellant DHH

DECLARATION OF SERVICE

I, GERALD STEEL, under penalty of perjury under the laws of the State of Washington declare as follows:

I am the attorney for Appellant herein. On August 10, 2017, by email sent by COA2 File Upload Manager Div-2eDocManagers@courts.wa.gov, I caused *Brief of Appellant* including this *Declaration of Service* to be served on:

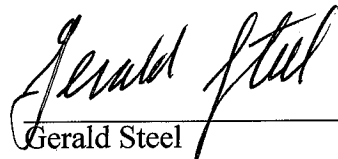
Eric Quinn
20 Forest Glen Lane SW
Lakewood, WA 98498

ericquinn@firehouselawyer2.com
eric.quinn253@gmail.com

David Alvarez
Deputy Prosecuting Attorney
223 East 4th Street, Suite 11
Port Angeles, WA 98362-3015

dalvarez@co.clallam.wa.us

Dated this 10th day of August, 2017, at Olympia, Washington.



Gerald Steel

APPENDIX A TO BRIEF OF APPELLANT

Case No. 50144-9-II

Color Copy of Appendix A to Petitioner
DHH's Opening Brief (CP94-124)

EXHIBIT LOG
A Zoning CUP (CUP 2015-07) & Variance (VAR2015-00004)
Proposed by Shirley Tjemsland to construct a 150 foot high mono-fir
Wireless Communication Equipment
January 27, 2016 Public Hearing

Exhibit Log Updated February 2, 2016
[Record Remained Open 5 Days Following Hearing – Closed Feb. 1, 2016 at 4:30 p.m.]

EXHIBITS ADMITTED BY THE HEARING EXAMINER AT THE JANUARY 27, 2016 HEARING:

AR INDEX

<u>Exhibit 1</u>	1	Updated Exhibit Log – Dated February 2, 2016
<u>Exhibit 2</u>	7	Staff Report dated December 2, 2015 [See Revised Staff Report - Exhibit 44]
<u>Exhibit 3</u>	28	Conditional Use Permit Application and Criteria
<u>Exhibit 4</u>	35	Variance Application and Criteria
<u>Exhibit 5A</u>	45	Vicinity Map
<u>Exhibit 5B</u>	46	Site Plan
<u>Exhibit 5C</u>	47	Compound Plan
<u>Exhibit 5D</u>	48	Elevation Section
<u>Exhibit 5E</u>	49	Area site section
<u>Exhibit 5F</u>	50	Photo simulation map location with numbers
<u>Exhibit 5G</u>	51	Photo simulations of Location 1, 3, and 6
<u>Exhibit 5H</u>	54	2011 Bing Map printed in 2015
<u>Exhibit 5I</u>	55	2013 Aerial Photo, Critical Areas, Hill Shade & Contour Map from County GIS
<u>Exhibit 5J</u>	59	Assessor's map - Parcel Information for APN 033006-249160
<u>Exhibit 5K</u>	62	Tjemsland Short Plat Volume 34 Page 22
<u>Exhibit 6A</u>	64	Email from Ken Hays dated November 10, 2015 [5:47 p.m.]
<u>Exhibit 6B</u>	65	Email from Ken Hays dated November 10, 2015 [5:50 p.m.]
<u>Exhibit 6C</u>	66	Email from Bryon Gunnerson dated November 12, 2015
<u>Exhibit 6D</u>	68	Larson camouflage drawings
<u>Exhibit 6E</u>	71	Email from Bryon Gunnerson dated November 13, 2015
<u>Exhibit 7A</u>	74	Letter of Authorization between Tjemsland/Radio Pacific, Inc. [Received by DCD September 29, 2015]
<u>Exhibit 7B</u>	76	Option and Lease Agreement between Tjemsland/Radio Pacific, Inc. [Redacted Version]
<u>Exhibit 8</u>	136	Archaeological Report
<u>Exhibit 9</u>	165	Good Faith Radio Frequency Analysis
<u>Exhibit 10A</u>	180	FAA Notice of Proposed Construction or Alteration
<u>Exhibit 10B</u>	182	FCC 301 Application for Construction Permit
<u>Exhibit 10C</u>	188	Multiple Ownership Service Contour Analysis

CLALLAM COUNTY D.C.D.
EXHIBIT 1
DATE 2-1-16

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<u>Exhibit 10D</u>	192	Allocation Study
<u>Exhibit 10E</u>	196	Waiver of §73.316(b)(1)
<u>Exhibit 10F</u>	197	RF Exposure Study
<u>Exhibit 10G</u>	200	Engineering Statement Calculation of RF/EMF Power Density Levels
<u>Exhibit 10H</u>	212	Phase 1 Environmental Site Assessment
<u>Exhibit 10I</u>	218	Limited Geotechnical Reconnaissance
<u>Exhibit 10J</u>	230	Sound/Distance Mapping
<u>Exhibit 10K</u>	238	Adapt Engineering Proposal
<u>Exhibit 11A</u>	242	SEPA Determination of Non-Significance issued November 27, 2015
<u>Exhibit 11B</u>	244	SEPA Environmental Checklist
<u>Exhibit 12</u>	255	Notice of Agency routing dated November 13, 2015
<u>Exhibit 13</u>	257	Notice of Application mailed to property owners within 600 feet of the landowners two parcels on November 13, 2015.
<u>Exhibit 14</u>	276	Declaration of Posting dated November 13, 2015
<u>Exhibit 15</u>	277	Classified Proof of notice describing CUP 2015-07 & date of scheduled Public Hearing in the Peninsula Daily News published November 13, 2015
<u>Exhibit 16</u>	279	DCD Permit Plan Query of WCF permits issued in Clallam County since 2001
<u>Exhibit 17</u>	281	DCD spread sheets of CUP for WCF issued from 1997 to 2001
<u>Exhibit 18</u>	282	Email from Matthew Morris , DOE, Re: Ecology's Toxic Cleanup Program
<u>Exhibit 19</u>	283	Email from Doug Schwarz dated November 20, 2015
<u>Exhibit 20</u>	285	Letter from Michael and Patricia Erwin dated November 24, 2015
<u>Exhibit 21</u>	287	Letter from Patricia Merritte dated November 24, 2015
<u>Exhibit 22</u>	288	Letter from Kenneth and Bonnie Kesler dated November 25, 2015 with attachment
<u>Exhibit 23</u>	292	Email from Don and Casey McInnes dated November 25 with attachments
<u>Exhibit 24</u>	297	Email from Don Grimm dated November 25, 2015
<u>Exhibit 25</u>	298	Email from Dick & Marty McMillin dated November 25, 2015
<u>Exhibit 26</u>	300	Email from Marty Grimm dated November 27, 2015
<u>Exhibit 27</u>	301	Email from Paula Mitchell dated November 29, 2015 with attachment
<u>Exhibit 28</u>	307	Letter from Don Myers dated November 27, 2015
<u>Exhibit 29</u>	309	Email from Dianna Sarto dated November 25 with attachments
<u>Exhibit 30</u>	341	Email from Deborah Harrison dated November 30, 2015 with attachments
<u>Exhibit 31</u>	403	Letter from Diane Hood received November 25, 2015 with attachments
<u>Exhibit 32</u>	427	Letter from James Mitchell dated November 30, 2015
<u>Exhibit 33</u>	430	Email from Eric Danielson dated November 30, 2015
<u>Exhibit 34</u>	431	Email from Robin and Verl Nelson received November 30, 2015
<u>Exhibit 35</u>	434	Comment from Edna Willadsen received November 30, 2015
<u>Exhibit 36</u>	437	Opposition from Gerald Steel dated November 30, 2015

<u>Exhibit 37</u>	473	Email dated October 19, 2015 regarding exposure with FM antennas
<u>Exhibit 38</u>	476	Tree Height data from CUP 2015-03
<u>Exhibit 39</u>	484	Photos of mono-pine from internet
<u>Exhibit 40</u>	486	Exhibit Log from CUP 2015-00003 [Available on Clallam County On-Line Permit System]
<u>Exhibit 41</u>	488	Email from Joseph Quinn dated December 2, 2015
<u>Exhibit 42</u>	493	Email from Jim Aldrich dated December 2, 2015
<u>Exhibit 43</u>	509	Order Continuing Hearing dated December 8, 2015 [From December 9, 2015 to January 27, 2015 per the Applicant's Request]
<u>Exhibit 44</u>	512	Revised Staff Report dated January 20, 2016
<u>Exhibit 45</u>	541	Exhibits 45A thru 45O - Supplemental information by Applicant/Applicant's Counsel
<u>Exhibit 45A</u>	541	RF Information
<u>Exhibit 45B</u>	544	RF Standards from OET Bulletin 65
<u>Exhibit 45C</u>	632	FCC Information
<u>Exhibit 45D</u>	640	Co-Location Analysis
<u>Exhibit 45E</u>	649	Photo Analysis of this proposal from U.S. 101
<u>Exhibit 45F</u>	664	Supplemental Noise Study
<u>Exhibit 45G</u>	687	Geotechnical Report for Mono-pole
<u>Exhibit 45H</u>	718	Aspect Constraints Report
<u>Exhibit 45I</u>	873	Supplement Photo Analysis of proposed mono-fir from 21 locations
<u>Exhibit 45J</u>	898	Height and Coverage Analysis for FM & Cellular
<u>Exhibit 45K</u>	918	Supplemental Good Faith & Alternatives Analysis
<u>Exhibit 45L</u>	947	Supplemental Analysis of Variance Criteria from Applicant's attorney
<u>Exhibit 45M</u>	998	Email from Eric Quinn dated January 19, 2016 with attachment in response to Mr. Steel's letter dated January 19, 2016 [Exhibit 66]
<u>Exhibit 45N</u>	1002	Likelihood of Co-Location of Cellular and Emergency Services Providers on mono-fir
<u>Exhibit 45O</u>	1006	Conceptual components of redesign to address DCD concerns about appearance of mono-fir
<u>Exhibit 46</u>	1008	Declaration of Mailing dated January 4, 2016
<u>Exhibit 47</u>	1015	Declaration of Posting dated January 5, 2016
<u>Exhibit 48</u>	1018	Affidavit of Publication dated January 5, 2016
<u>Exhibit 49</u>	1022	Letter from Diane & Gary Salyer dated November 21, 2015
<u>Exhibit 50</u>	1028	Email from Jim and Linda Aldrich dated November 30, 2015
<u>Exhibit 51</u>	1035	Email from Barbara Harris dated December 7, 2015
<u>Exhibit 52</u>	1039	Email from Patricia Merritte dated December 2, 2015
<u>Exhibit 53</u>	1040	Article on Radiation received December 8, 2015
<u>Exhibit 54</u>	1043	Email from Andy Romano dated December 22, 2015
<u>Exhibit 55</u>	1044	Email from Suyin & Steve Karlsen dated December 28, 2015

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BINDER 2 of 3

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<u>Exhibit 56</u>	1046	Email from Steve Jackson, Fire District #3, dated December 29, 2015
<u>Exhibit 57</u>	1048	Email from Donald & Kathryn Cooper dated January 4, 2016
<u>Exhibit 58</u>	1049	Email from Chris Hugo, City of Sequim, dated January 5, 2016
<u>Exhibit 59</u>	1058	Email from Connie Kinyon dated January 11, 2016
<u>Exhibit 60</u>	1060	Email from Jim Mc Entire dated January 11, 2016 <i>BINDER 3 of 3</i>
<u>Exhibit 61</u>	1062	Letter from Andy Saltee, Sequim Valley Airport, dated January 9, 2016
<u>Exhibit 62</u>	1063	Email from Janet Marx dated January 12, 2016
<u>Exhibit 63</u>	1064	Email from Catherine Harper dated January 5, 2016
<u>Exhibit 64</u>	1065	Email from Diane Hood dated January 14, 2016 with attached City of Sequim Cell Tower Moratorium Information
<u>Exhibit 65</u>	1076	Email from William Aurich dated January 19, 2016
<u>Exhibit 66</u>	1078	Email from Gerald Steel dated January 19, 2016
<u>Exhibit 67</u>	1085	Email from Paula Mitchell dated January 19, 2016
<u>Exhibit 68</u>	1100	Email from Jim Aldrich dated January 19, 2016
<u>Exhibit 69</u>	1114	Petition in Opposition with signatures and 16 attached emails [may be previously entered into the record], however, identified as follows: Email from Beth Loveridge dated January 16, 2016 Email from Teri Crockett dated January 6, 2016 Email from Teri Crockett dated December 10, 2015 Email from Linda Melos dated December 13, 2015 Email from Patty McManus dated January 6, 2016 Email from Pam Larsen dated January 6, 2016 Email from Myla Gloor dated January 6, 2016 Email from Kia Kozun dated January 6, 2016 Email from Kia Kozun dated December 21, 2015 Email from Theresa Valenzuela dated January 6, 2016 Email from Cort Armstrong dated January 6, 2016 Email from Jane Vanderhoof dated January 6, 2016 Email from Jessica Haugen dated January 6, 2016 Email from Mary Wong dated January 7, 2016 Email from Zuzana Dillon dated January 10, 2016 Email from Donna Wilson-Sommer dated January 14, 2016
<u>Exhibit 70</u>	1139	Letter from Tony Hudson, Fire District No. 3, dated January 20, 2016
<u>Exhibit 71</u>	1140	Cell Towers established from 1997 to 2001 with permitting & zoning attachments
<u>Exhibit 72</u>	1160	WCF Permits issued from 2001 to 2016 showing inadequate radial screening around six existing WCF towers
<u>Exhibit 73</u>	1181	Corrected photo analysis from Jim Aldrich [Replaces Exhibit 68]
<u>Exhibit 74</u>	1195	Email from Carrol Hull dated January 20, 2016
<u>Exhibit 75</u>	1197	Letter from Don McInnes dated January 20, 2016
<u>Exhibit 76</u>	1200	Comments from On-Line Permitting System from Fire District No. 3 & William Aurich

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<u>Exhibit 77</u>	1208	Email from Gayle Selby dated January 22, 2016
<u>Exhibit 78</u>	1210	Email from Anna Yates dated January 25, 2016
<u>Exhibit 79</u>	1211	Email from Linda Atkins, T-Mobile, dated January 25, 2016 with attached legal and supplemental RF analysis
<u>Exhibit 80</u>	1347	Email from Eric Quinn dated January 26, 2016
<u>Exhibit 81</u>	1355	Email from Jerry and Susan Tonini dated January 26, 2016
<u>Exhibit 82</u>	1356	Email from Scott Baker dated January 26, 2016
<u>Exhibit 83</u>	1357	Email from Chris Tipton dated January 26, 2016
<u>Exhibit 84</u>	1358	Email from Sarah Salazar Tipton dated January 27, 2016
<u>Exhibit 85</u>	1359	Email from Janet Marx dated January 27, 2016
<u>Exhibit 86</u>	1363	Email from Barry Ganci dated January 27, 2016
<u>Exhibit 87</u>	1364	Letter from Gerald Steel dated January 27, 2016
<u>Exhibit 88</u>	1383	Fax from Diane Hood dated January 25, 2016
<u>Exhibit 89</u>	1385	Letter from Mark Ozias dated January 27, 2016
<u>Exhibit 90</u>	1386	International Appeal: Scientists call for Protection from Non-ionizing Electromagnetic Field & Public Perceptions Re: Impacts to Property Values [Submitted by Jim Aldrich at January 27, 2016 Hearing]
<u>Exhibit 91</u>	1395	Applicant's Misleading Photo Supplement of Proposed Mono-Fir [Submitted by Jim Aldrich at January 27, 2016 Hearing]
<u>Exhibit 92</u>	1405	Letter from Diane Hood with Attachment [Submitted by Diane Hood at January 27, 2016 Hearing]
<u>Exhibit 93</u>	1410	Petitions of Clallam County Residents in Opposition of Proposal [Submitted by Diane Hood at January 27, 2016 Hearing]
<u>Exhibit 94</u>	1428	Letter from Gerald Steel with Attachments [Submitted by Tom Marciniec at January 27, 2016 Hearing]
<u>Exhibit 95</u>	1447	Cell Tower Alternatives [Submitted by Dianna Sarto at January 27, 2016 Hearing]
<u>Exhibit 96</u>	1455	Letter from Don Myers [Submitted by Don Myers at January 27, 2016 Hearing]
<u>Exhibit 97</u>	1456	Exhibit Appraisal Reports [Submitted by Bryon Gunnerson at January 27, 2016 Hearing]

EXHIBITS RE: AUDIO RECORDING AND SIGN-IN SHEETS FROM JANUARY 27, 2016 HEARING:

<u>Exhibit 98</u>	1484	Sign-In Sheets from Hearing of January 27, 2016
<u>Exhibit 99</u>	1492	Audio [CD] Recording of Hearing of January 27, 2016

EXHIBIT RE: HEARING EXAMINER ALLOWANCE DURING 5-DAY EXTENSION THRU FEB. 1, 2016:

<u>Exhibit 100</u>	1493	Email to Eric Quinn from Tami Breitbach dated January 28, 2016
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A5

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EXHIBITS ALLOWED BY HEARING EXAMINER THRU FEB. 1, 2016:

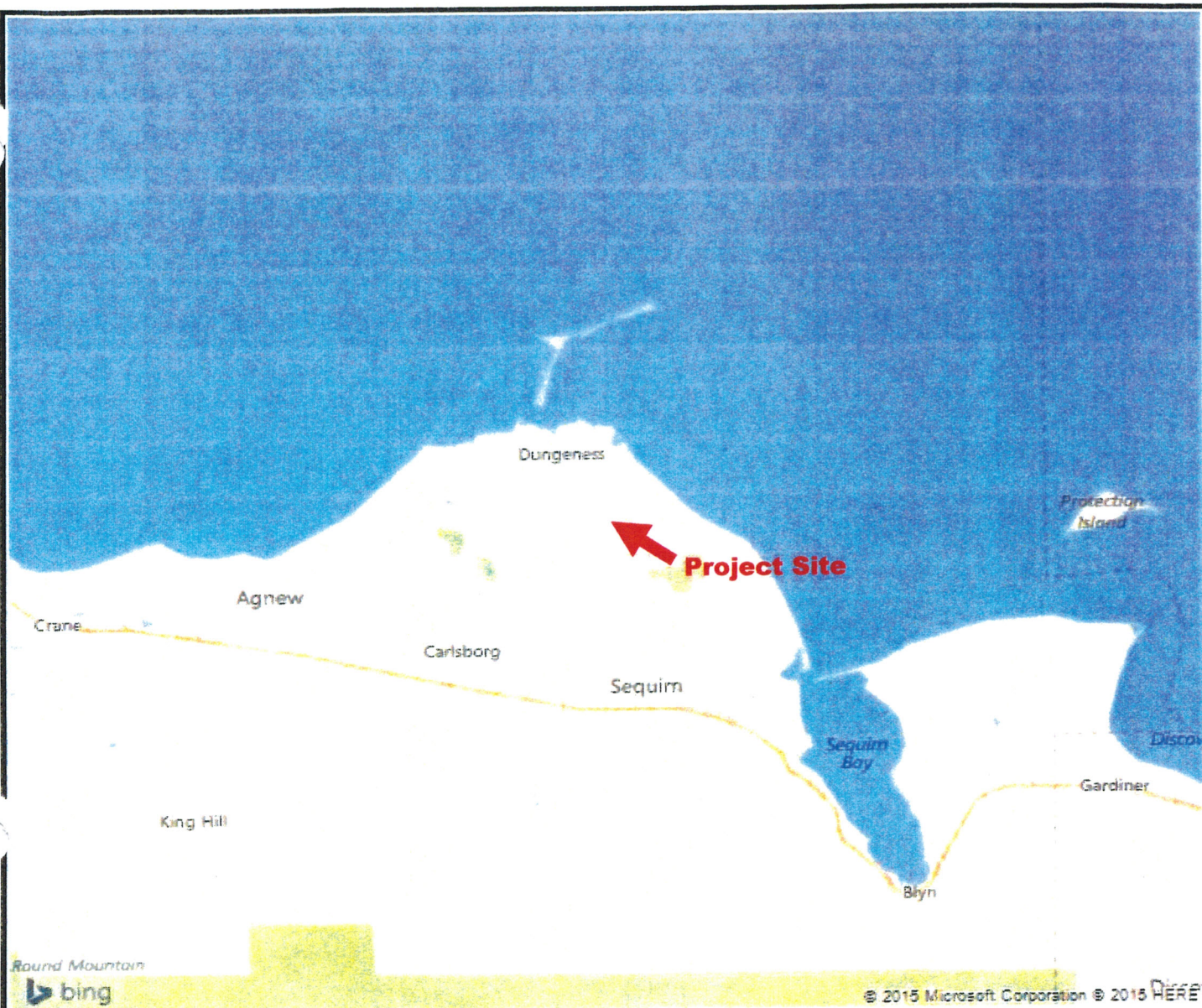
<u>Exhibit 101</u>	1494	Email from Barbara Harris dated January 31, 2016
<u>Exhibit 102</u>	1497	Email from Judith Parker dated February 1, 2016 with attachment
<u>Exhibit 103</u>	1502	Email from Eric Quinn dated February 1, 2016 with attachment

EXHIBITS RE: ADMINISTRATIVE / HEARING EXAMINER DECISION / SUPPLEMENTAL TO RECORD:

<u>Exhibit 104</u>	1516	Order Extending Time for Hearing Examiner Decision dated February 16, 2016
<u>Exhibit 105</u>	1517	Declaration of Mailing dated February 16, 2016 Re: Order Extending Time for Hearing Examiner Decision dated February 16, 2016
<u>Exhibit 106</u>	1519	Order Extending Time for Hearing Examiner Decision dated March 1, 2016
<u>Exhibit 107</u>	1520	Declaration of Mailing dated March 1, 2016 Re: Order Extending Time for Hearing Examiner Decision dated March 1, 2016
<u>Exhibit 108</u>	1522	Email from Gerald Steel dated February 26, 2016 – Requesting that the Decision be mailed to Mr. Steel, opposed to being emailed [per Dungeness Heights Homeowners]
<u>Exhibit 109</u>	1523	Findings of Fact, Conclusions of Law and Decision dated March 3, 2016
<u>Exhibit 110</u>	1545	Notice of Decision dated March 3, 2016
<u>Exhibit 111</u>	1546	Declaration of Mailing dated March 3, 2016 Re: Decision and Notice of Decision (Forwarded via Email)
<u>Exhibit 112</u>	1549	Email dated March 3, 2016 Re: System Administrator Notification of (2) Undeliverable Emails
<u>Exhibit 113</u>	1551	Declaration of Mailing dated March 4, 2016 Re: Decision and Notice of Decision (Forwarded via U.S. Mail)
<u>Exhibit 114</u>	1553	Email correspondence between Eric Quinn and Clerk between March 3, 2016 and March 7, 2016
<u>Exhibit 115</u>	1556	Request for Clarification dated March 4, 2016 from Eric Quinn (Rec'd March 7, 2016)
<u>Exhibit 116</u>	1560	Email dated March 7, 2016 – Forwarding Request for Clarification to Hearing Examiner
<u>Exhibit 117</u>	1561	Order Correcting Scrivener's Error On March 3, 2016 Opinion dated March 8, 2016
<u>Exhibit 118</u>	1562	Notice of Order Correcting Scrivener's Error on Opinion dated March 8, 2016
<u>Exhibit 119</u>	1563	Declaration of Mailing dated March 8, 2016 Re: Notice of Order; Mr. Quinn's Request for Clarification; and Order Correcting Opinion (Forwarded via Email)
<u>Exhibit 120</u>	1566	Email dated March 8, 2016 Re: System Administrator Notification of (2) Undeliverable Emails
<u>Exhibit 121</u>	1568	Declaration of Mailing dated March 9, 2016 Re: Notice of Order; Mr. Quinn's Request for Clarification; and Order Correcting Opinion (Forwarded via U.S. Mail)
<u>Exhibit 122</u>	1570	Emails between Eric Quinn and Clerk dated February 2, 2016
<u>Exhibit 123</u>	1577	Letter to Mary DePaolo dated February 3, 2016 with attachments

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Source: Bing Maps



Adapt Engineering
615 - 8th Avenue South
Seattle, Washington 98104

Tel (206) 654-7045
Fax (206) 654-7048

FIGURE 1 - Location Map

Project: Radio Pacific Sequim Project
Address: 686 Brigadoon Boulevard
Sequim, Washington 98382
Client: Radio Pacific, Inc.
Project No.: WA15-20045-NEP

Date: 01/05/16



A7

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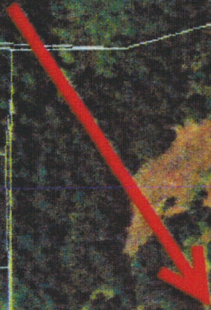


0221

A8

<p>Resolve Environmental & Geotechnical, Inc.</p> <p>(360) 865-1843 resolveeg@comcast.net</p>	<p>FIGURE 1: Site Vicinity Map</p>	<p>PROJECT:</p> <p>Limited Geotechnical Reconnaissance Radio Pacific Property Clallum County Parcel No. 033006249160 Sequim, Washington</p> <p>Prepared for: Mr. Bryon Gunnerson</p>
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033006249160000
Brigadoon Blvd

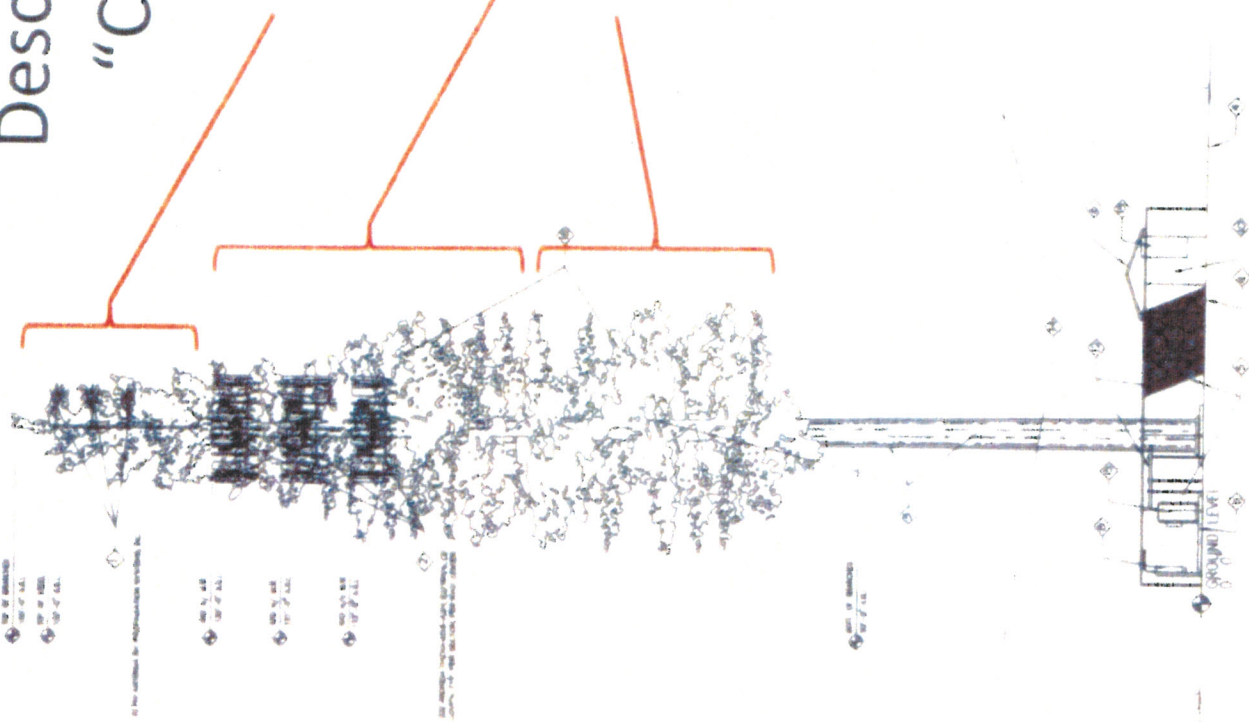


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Description of Commitment

"Condition of Consent"



- 1) Top 15_{ft}: Use as few limbs as possible, more snag like and have an aggressive pole taper. Frond angle up ~14°
- 2) 100_{ft}-to-135_{ft} use ~90° angle on the fronds.
- 3) 50_{ft}-to-100_{ft} use ~11° angle down on fronds. Make the limbs greater than 12_{ft} from base if manufacture can support.
- 4) Mixture of fronds material if possible from manufacture so there is some randomness to the pattern.
- 5) Trunk color will be medium to dark brown.

See measured angles from example Douglas Fir on next page.

A10

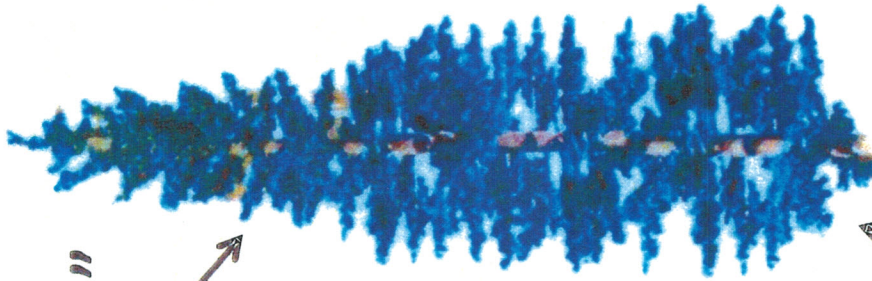
0877



All

0305

Proposed
"mono-fir"



"Camouflaged" tower
(i.e. proposed mono-
fir) does not look like
real fir trees

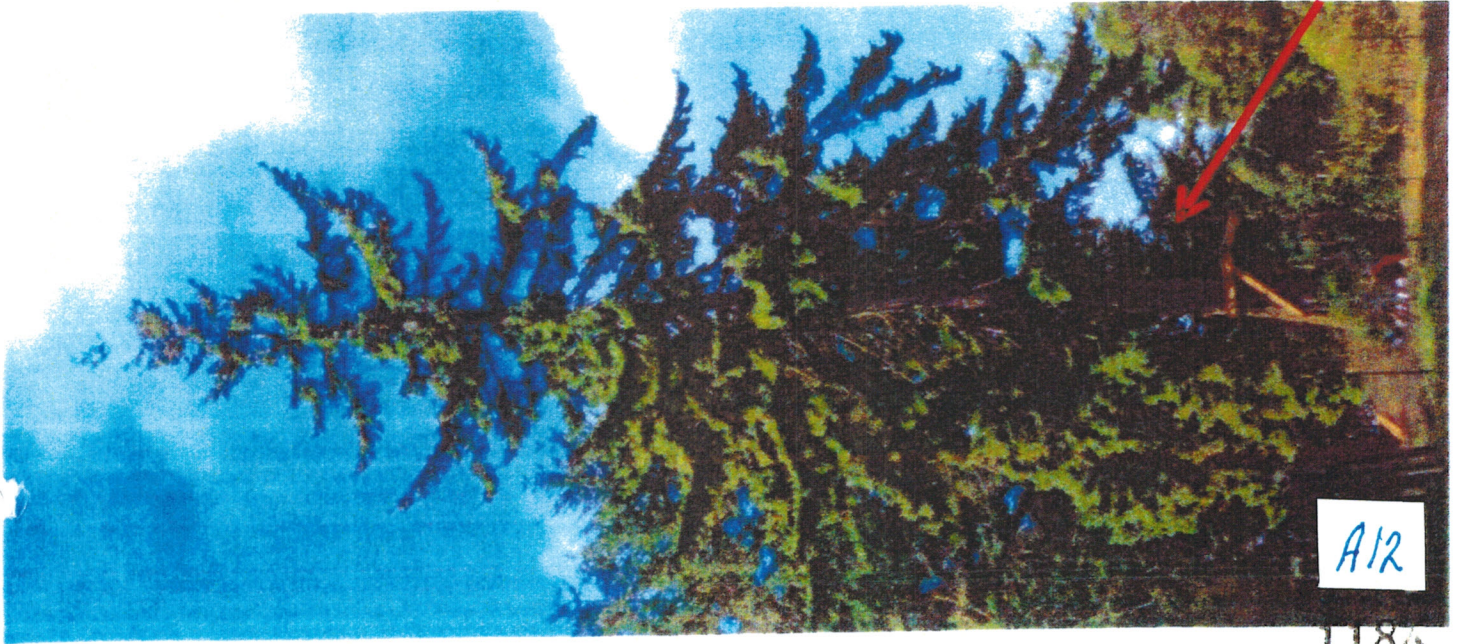
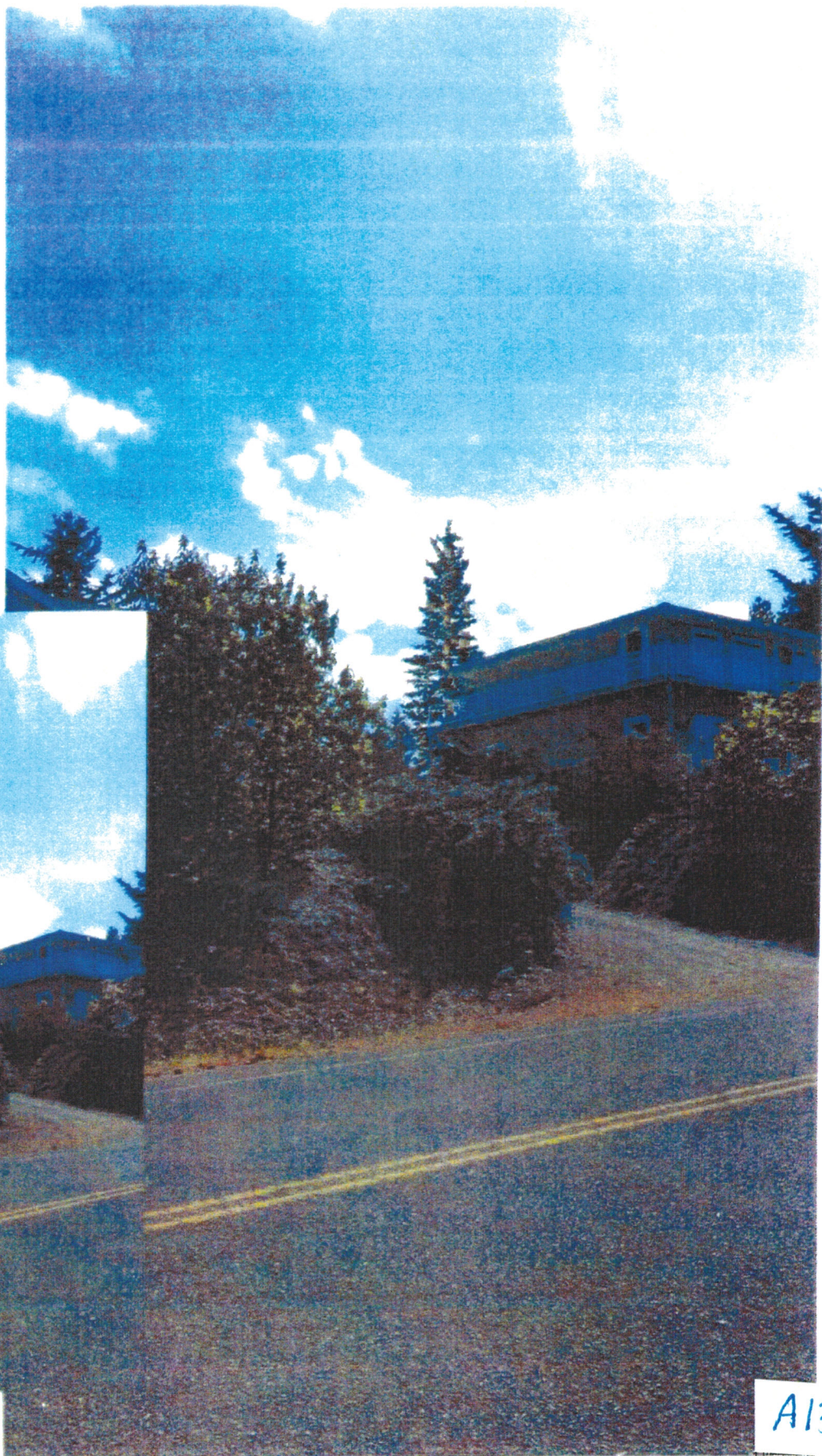


Figure 1

A12



Original Image



Composite Image

GPS Location 6
0886

A13

**Figure 2a. Extant view from Aldrich
residence at 741 Brigadoon Boulevard of
proposed cell tower site.**



A14

0500



Original Image



Composite Image

GPS Location 3
0885

A15



Composite Image



Original Image

GPS Location 14

A16

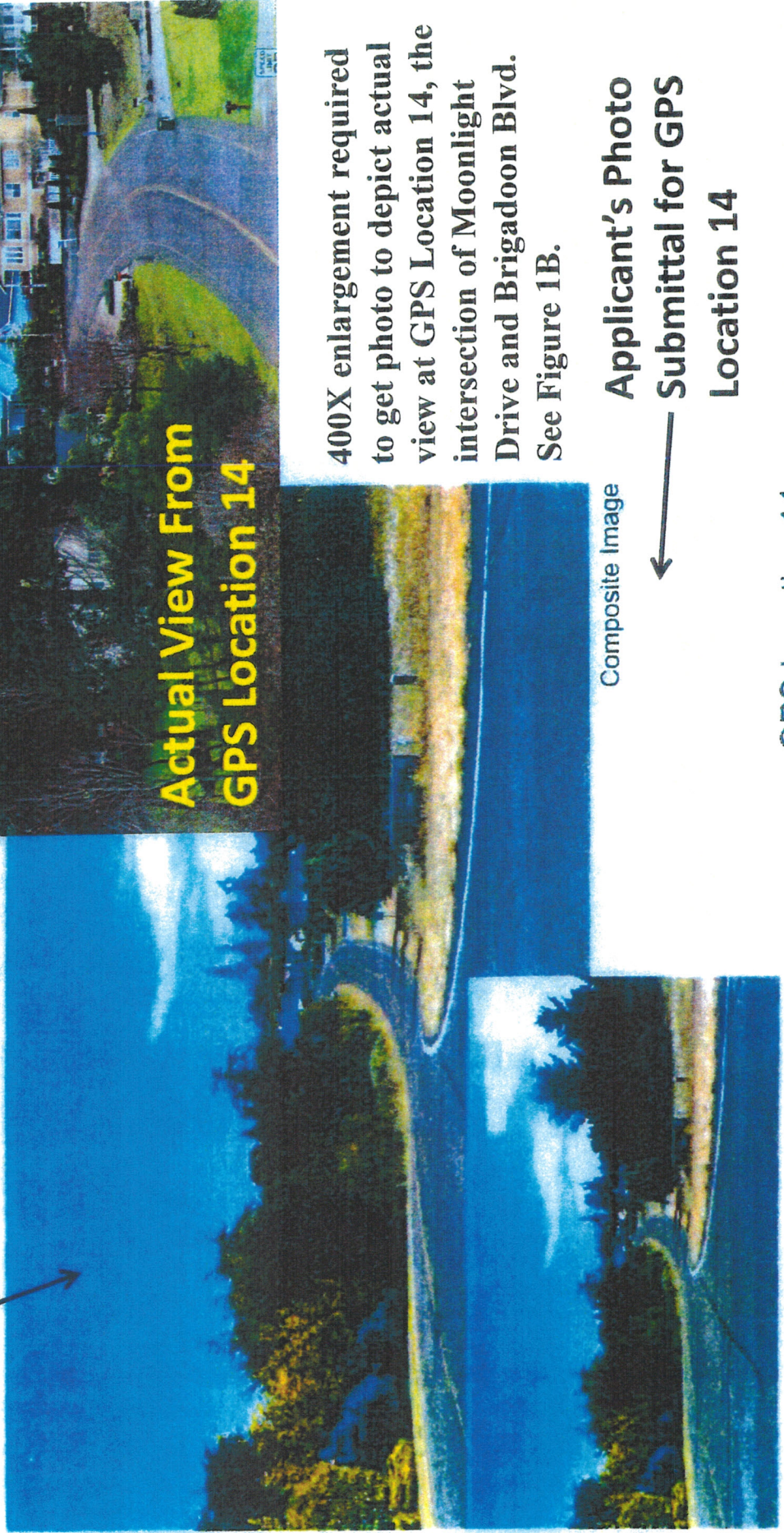
0890



A17

0882

Applicant's camera setting makes objects appear farther away than they are



400X enlargement required to get photo to depict actual view at GPS Location 14, the intersection of Moonlight Drive and Brigadoon Blvd. See Figure 1B.

Applicant's Photo
Submittal for GPS
Location 14

GPS Location 14

Figure 1A



Size of buildings and other objects reflect actual size they will appear to an observer at Applicant's GPS Location 14

400% Enlargement of Applicant's GPS Location 14 Composite Image corrects actual view from intersection of Moonlight Drive and Brigadoon Blvd.

The Photoshopped "Mono-Fir", of course, also increases in size 400%



Figure 1B

A19

2)

A20

0317



From the North - Ireland church
Looking south

5)

Looking SOUTH FROM next to mound

A21

0320



0315

Looking from sequim. Dungeness way (scenic loop)
west



A23
0316

A24

0318

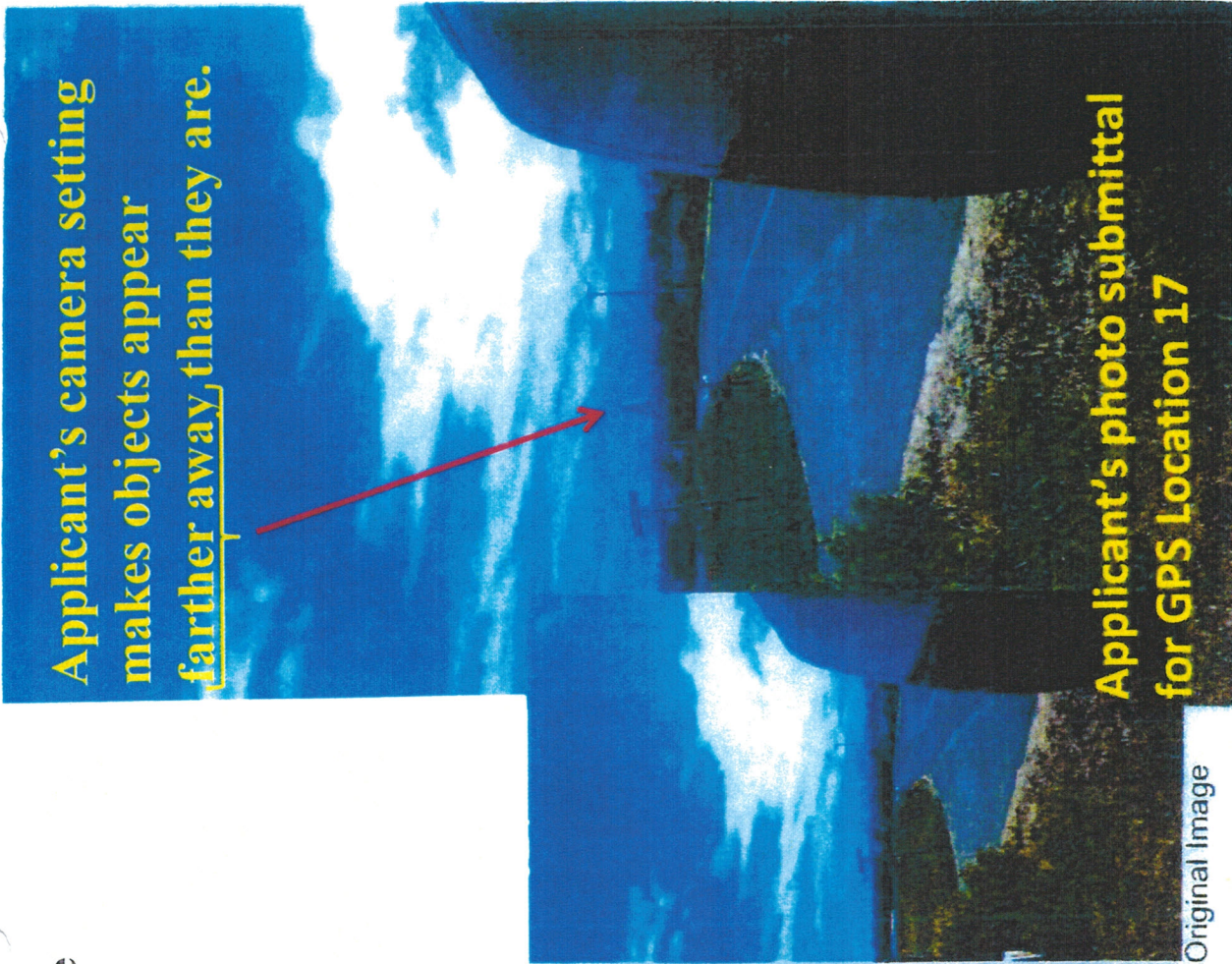
FROM ACROSS street (Sequim Dwyer (Wray View Bakery at ridge)



The red square outlines photos submitted by the applicant for this same location in a CUP2015-03 submittal. See Figure 3B.



A25



Applicant's camera setting makes objects appear farther away than they are.

Applicant's photo submittal for GPS Location 17

Original Image Composite Image GPS Location 17

Figure 3A

The two smaller photos reflect the actual view from GPS Location 17, intersection of Primrose Lane and Sequim Dungeness Way, outlined by the red box on Figure 3A. Notice the Photoshopped 100 ft tall mono-pole, 2/3 the height of the proposed 150 ft cell tower.

GPS Location 17

GPS Location 17
photo submittal by
applicant for CUP
2015-03 mono-pole.

Crane
Boom

Photoshopped
"mono-fir"

Photoshopped
Mono-pole

Photoshopped
Mono-pole

Size of buildings and other objects in this picture reflect actual size as they will appear to an observer standing at Applicant's GPS Location 17. Compare this photo with the composite photo in Figure 3A submitted by the applicant gives a false impression of the true size of the "mono-fir".

Figure 3B

A26

Uniform Residential Appraisal Report

15026427

File # 556-1726735

There are 10 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 159,000 to \$ 289,000	
There are 43 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 155,000 to \$ 275,000	
FEATURE	SUBJECT
Address	1772 Melody Ln Port Angeles, WA 98362
Proximity to Subject	1.06 miles NW
Sale Price	\$ 167,500
Sale Price/Gross Liv. Area	\$ 126.61 sq.ft.
Data Source(s)	PARAGON #291281;DOM 7
Verification Source(s)	CO REC / REALIST
VALUE ADJUSTMENTS	DESCRIPTION DESCRIPTION +/- \$ Adjustment
Sales or Financing Concessions	ArmlLth Conv:0
Date of Sale/Time	07/15;009/15
Location	N;Antenna: A;BayRd;
Leasehold/Fee Simple	FEE SIMPLE
Site	34725 sf
View	N;Res: N;Res:
Design (Style)	DT1.00;PANABO DT1.00;RANCH
Quality of Construction	Q4
Actual Age	54
Condition	C3
Above Grade	Total Bdrms. Baths
Room Count	7 4 0.3
Gross Living Area	1,323 sq.ft.
Basement & Finished Rooms Below Grade	Def
Functional Utility	AVG UTILITY
Heating/Cooling	BSBRD/NONE
Energy Efficient Items	NONE
Garage/Carport	2dw
Porch/Patio/Deck	PORCH/DECK
OTHER	3 SHEDS
carable functional obsolescence	NO FULL BATH
Net Adjustment (Total)	\$ 3,208
Adjusted Sale Price of Comparables	\$ 173,108

I ☒ did ☐ did not research the sale or transfer history of the subject property and comparable sales. If not, explain

My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s) PARAGON / ASHTON DATA / COUNTY RECORDS

My research ☐ did ☒ did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.

Data Source(s) PARAGON / ASHTON DATA / COUNTY RECORDS

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

ITEM	SUBJECT	COMPARABLE SALE #1	COMPARABLE SALE #2	COMPARABLE SALE #3
Date of Prior Sale/Transfer				
Price of Prior Sale/Transfer				
Data Source(s)	PARAGON/CO REC	PARAGON/CO REC	PARAGON/CO REC	PARAGON/CO REC
Effective Date of Data Source(s)	12/10/2015	12/10/2015	12/10/2015	12/10/2015
Analysis of prior sale or transfer history of the subject property and comparable sales	THE SUBJECT HAS NO TRANSFERS OR SALES IN THE PREVIOUS 3 YEARS PER LOCAL MLS / CO REC. THE COMPARABLE SALES SELECTED HAVE NOT SOLD IN THE PREVIOUS CALENDAR YEAR OTHER THAN SHOWN ABOVE PER LOCAL MLS / COUNTY RECORDS			

Summary of Sales Comparison Approach SEE ATTACHED ADDENDUM.

Indicated Value by Sales Comparison Approach \$ 170,000

Indicated Value by: Sales Comparison Approach \$ 170,000 Cost Approach (if developed) \$ 170,290 Income Approach (if developed) \$ 0

SEE ATTACHED ADDENDUM.

This appraisal is made ☐ "as is", ☐ subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, ☒ subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or ☐ subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair. SEE ATTACHED ADDENDUM.

Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ 170,000, as of 12/10/2015, which is the date of inspection and the effective date of this appraisal.

A27

1459

Uniform Residential Appraisal Report

15026427

File # 566-1726735

There are 10 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 159,000 to \$ 289,000		There are 43 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 155,000 to \$ 275,000	
FEATURE	SUBJECT	COMPARABLE SALE #1	COMPARABLE SALE #2
Address	1772 Melody Ln Port Angeles, WA 98362	916 S Race St Port Angeles, WA 98362	1009 Homestead Ave Port Angeles, WA 98362
Proximity to Subject	1.06 miles NW	0.91 miles SW	0.05 miles E
Sale Price	\$ 167,500	\$ 166,900	\$ 180,000
Sale Price/Gross Liv. Area	\$ 126.61 sq.ft.	\$ 129.80 sq.ft.	\$ 140.00 sq.ft.
Data Source(s)	PARAGON #291281;DOM 7	PARAGON #291398;DOM 1	PARAGON #282262;DOM 46
Verification Source(s)	CO REC / REALIST	CO REC / REALIST	CO REC / REALIST
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION	DESCRIPTION
Sales or Financing Conventions	Armlth Cash:0	Armlth Conv:0	Armlth SEE ADDN:0
Date of Sale/Time	07/15;08/15	08/15;07/15	02/15;01/15
Location	N:Antenna	O:N:Res;	-10,000 N:Res;
Leasehold/Paid Simple	FEE SIMPLE	FEE SIMPLE	FEE SIMPLE
Site	34725 sf	34848 sf	33105 sf
View	N:Res;	N:Res;	N:Res;
Design (Style)	DT1.00;PANAB	DT1.00;RANCH	DT2.00;SPLIT E
Quality of Construction	Q4	Q4	Q4
Actual Age	54	52	51
Condition	C3	C4	C3
Above Grade	Total Bdrms. Baths	Total Bdrms. Baths	Total Bdrms. Baths
Room Count	7 4 0.3	5 2 2.0	0 6 3 1.1
Gross Living Area	1,323 sq.ft.	1,311 sq.ft.	1,512 sq.ft.
Basement & Finished Rooms Below Grade	0sf	0sf	852sf;852sf;100sf
Functional Utility	AVG UTILITY	AVG UTILITY	AVG UTILITY
Heating/Cooling	BSBRD/NONE	BSBRD/NONE	BSBRD/NONE
Energy Efficient Items	NONE	NONE	NONE
Garage/Carport	2dw	2dw	2dw
Porch/Patio/Deck	PORCH/DECK	PORCH/DECK	PORCH/DECK
OTHER	3 SHEDS	2WS, SHP	0 2FP POOL
carable functional obsolescence	NO FULL BATH	YES	YES
Net Adjustment (Total)	\$ 3,208	\$ -6,521	\$ -47,490
Adjusted Sale Price of Comparables	Net Adj. 1.9 % Gross Adj. 18.5 %	Net Adj. 4.7 % Gross Adj. 22.7 %	Net Adj. 22.6 % Gross Adj. 23.8 %

I ☒ did ☐ did not research the sale or transfer history of the subject property and comparable sales. If not, explainMy research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s) PARAGON / ASHTON DATA / COUNTY RECORDS

My research ☐ did ☒ did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.

Data Source(s) PARAGON / ASHTON DATA / COUNTY RECORDS

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

ITEM	SUBJECT	COMPARABLE SALE #1	COMPARABLE SALE #2	COMPARABLE SALE #3
Date of Prior Sale/Transfer				
Price of Prior Sale/Transfer				
Data Source(s)	PARAGON/CO REC	PARAGON/CO REC	PARAGON/CO REC	PARAGON/CO REC
Effective Date of Data Source(s)	12/10/2015	12/10/2015	12/10/2015	12/10/2015
Analysis of prior sale or transfer history of the subject property and comparable sales THE SUBJECT HAS NO TRANSFERS OR SALES IN THE PREVIOUS 3 YEARS PER LOCAL MLS / CO REC. THE COMPARABLE SALES SELECTED HAVE NOT SOLD IN THE PREVIOUS CALENDAR YEAR OTHER THAN SHOWN ABOVE PER LOCAL MLS / COUNTY RECORDS				

Summary of Sales Comparison Approach SEE ATTACHED ADDENDUM.

Indicated Value by Sales Comparison Approach \$ 170,000

Indicated Value by: Sales Comparison Approach \$ 170,000

Cost Approach (if developed) \$ 170,290

Income Approach (if developed) \$ 0

SEE ATTACHED ADDENDUM.

This appraisal is made ☐ "as is" ☐ subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, ☒ subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or ☐ subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair: SEE ATTACHED ADDENDUM.

Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ 170,000 as of 12/10/2015, which is the date of inspection and the effective date of this appraisal.

Supplemental Addendum

Map No. 150113

Borrower/Guest	Shirley Tjemland	County	Clallam	State	WA	Zip Code	98382
Property Address	NNA Brigadoon Blvd						
City	Sequim						
Lender	Shirley Tjemland						

1/18/2016

A response to an inquiry regarding the value of NNA Brigadoon Blvd (a 9.13 acre site, parcel #033066-249160) from an appraisal completed by Phil Langston and dated 2/24/2015 where an opinion of value was given to the property of \$98,000.

It has been brought to my attention from Shirley Tjemland, owner of subject property, and Bryon Gunnerson, of Gunnerson Consulting and Communication Site Services, LLC and representative of Radio Pacific that a proposed mono-fir, wireless carrier, FM station will be placed on the Tjemland 9.13 acre site. The question asked of me is "will this mono-fir have an adverse or positive impact on the value of the subject site?"

This appraiser has not appraised a property where this situation has been brought to my attention, thus, I have no experiential evidence to support a conclusion either supporting increased or decreased value. Therefore, I have requested pictures and any evidence that supports a conclusion one way or the other. In addition, I have searched for sales of properties that have said towers on contiguous sites where conclusions have been made one way or the other.

To date, only one sale (1772 Melody Ln, effective date 12/10/2015) was found where two 290ft guyed towers with no camouflage were located on a contiguous site and according to a review of that appraisal, I found no evidence that the towers had either a positive or a negative affect upon the subject property.

A collection of before and after pictures of mono-fir towers on properties located near the subject site on Brigadoon Blvd was obtained from Bryon Gunnerson. I found it difficult to identify the towers because of the similarity of their appearance to the surrounding treed sites. Appearance wise they blend into the topography and the wooded areas. A sample of one of the pictures is included with this comment page. In addition, a description of the mono-fir tower as well as a map of existing towers is included.

Upon questioning Bryon Gunnerson, I found that these towers are considered personal property and can be removed similar to RV homes, mobile trailers, and boats. Any of these personal property items can be affected by covenants in some communities, but where no covenants have been generated, the value of mono-fir towers must be given as personal property and not real property.

Because no evidence from past appraisals showing an increased or decreased value; no evidence that shows a negative affect upon the topography and landscape; and because the towers are personal property verses real property, this appraiser concludes that the value of the subject site as appraised remains the same.

Signature
Name: Phil Langston
Date Signed: 01/18/2016
State Certification #
Or State License #: 1600238

State
State: WA

Signature
Name
Date Signed
State Certification #
Or State License #

State
State

A29
1479

CELL TOWER NEGATIVE IMPACT ON HOUSE PRICES

The Impact of Cell Phone Towers on House Prices in Residential

Neighborhoods: *The Appraisal Journal*, Summer 2005, Bond, S. and Wang, K., p. 256-277.

This paper in the peer-reviewed *The Appraisal Journal* discusses an investigation that used both an opinion survey and an econometric analysis of sales transactions data to assess the impact of cell towers on property values. The opinion survey was conducted to investigate the perceptions of residents towards living near a cell tower and how this proximity might affect property values. A market study was conducted to test the hypothesis that in suburbs where there is a cell tower it will be possible to observe discounts to the selling price of home located near those structures. The economic analysis confirmed the opinion survey results. Sales data from sales that occurred before a cell tower was built was compared to sales data from after a cell tower was built to determine any variance in price, after accounting for all relevant independent variables.

The analyses show:

- The issue of greatest concern for survey respondents in both the case study (neighborhoods with houses 900 feet or less from a cell tower) and control areas (matched areas with houses more than 3000 feet from the cell tower) is the impact of proximity to cell towers on future properties values.
- Overall respondents would pay from 10%-19% less to over 20% less for property if it were in close proximity to a cell tower.
- Results of the sales analysis showed prices or properties were reduced by around 21% after a cell tower was built in the neighborhood.

National Institute for Science, Law and Public Policy

The National Institute for Science, Law and Public Policy's survey "**Neighborhood Cell Towers and Antennas – Do They Impact a Property's Desirability?**" in June 2014 was completed by 1000 respondents. The survey was circulated online through email and social networking sites in both the U.S. and abroad sought to determine if nearby cell towers and antennas, or wireless antennas placed on top of or on the side of a building would impact a home buyer's or renter's interest in a real estate property.

The survey results:

- 94% said a nearby cell tower or group of antennas would negatively impact their interest in a property and the price they would be willing to pay for it.
- 79% said under no circumstances would they ever purchase or rent a property within a few blocks of a cell tower or antennas

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0407

A Pushback Against Cell Towers

The New York Times, August 27, 2010 article **A Pushback Against Cell Towers** includes the following statements:

- Tina Canaris, an associate broker and co-owner of RE/MAX Hearthstone (in Merrick) said cell antennas and towers near homes affected property values adding, "You can see a buyer's dismay over the sight of a cell tower near a home just by their expression, even if they don't say anything."
- Frank Schilero, an associate broker with RE/MAX Innovations (in Wantagh) said "People don't like living next to cell towers for medical reasons or aesthetics ...they don't want that eyesore sticking up in their backyards."

Appraiser: Cell Tower Will Affect Property Values

Real estate appraiser Robert Heffernan of Robert F. Heffernan and Associates presenting testimony as an expert witness, in early 2012, concerning a T-Mobile application for a 130 foot tower (in Bridgewater, NJ) impact on property values. Based on adjustments for price differentials (e.g. siding, location, etc.) for the sales price of a house (\$174.91 per square foot) with a winter view of a tower and sales price for another house (\$182.08 per square foot) without a clear view of the tower he determined the property value of the house with a view of the tower was 10.7% less than it would be if the tower did not exist.

A31

0408

APPENDIX B TO BRIEF OF APPELLANT

Case No. 50144-9-II

Copies of Sections of Clallam County Code
("CCC") cited in Brief

26.04.010 Authority.

The Clallam County Hearing Examiner is hereby created under the authority of Chapters 36.70 and 36.70A RCW, as now or hereafter amended, and the Clallam County Home Rule Charter.

B1

26.04.050 Public hearings.

(1) The public hearing will be informal in nature, but organized so that testimony and evidence can be presented efficiently. The hearing shall include at least the following elements:

- (a) An introductory outline of the procedure by the Hearing Examiner.
- (b) Testimony by the Department of Community Development staff which shall summarize the written staff report and provide any additional exhibits or other information the staff believes should be brought to the Hearing Examiner's attention.
- (c) Testimony by the applicant and the applicant's witnesses.
- (d) Testimony from other individuals or organizations wishing to be heard.
- (e) Questions by the Hearing Examiner.
- (f) Rebuttal witnesses (if any).

Any participant in the hearing may make all or part of his or her presentation through witnesses.

(2) All testimony shall be taken under oath or affirmation.

(3) Hearings shall be electronically recorded and the recordings shall be made a part of the record. Copies of the electronic recordings shall be made available upon request and payment of the costs of reproduction.

(4) Technical rules of evidence will not be applied. The key requirements for evidence will be relevance and reliability. Relevant and reliable evidence will be admitted if it possesses probative value commonly accepted by reasonable persons in the conduct of their affairs. The credibility of witnesses and the weight of evidence are within the sole discretion of the Hearing Examiner.

(a) Documents, photographs and physical evidence will be admitted as exhibits and each will be assigned an exhibit number. Exhibits will be retained until after a decision is rendered and all appeal proceedings, if any, have been concluded.

(b) The staff report or staff analysis produced by the Department of Community Development will be admitted as Exhibit 1 in every hearing.

(c) Testimony may be presented orally, in writing, or both. Persons giving oral testimony shall be subject to questioning by the Hearing Examiner. Written testimony may be presented either in advance or at the hearing. When testimony is presented only in writing, the Hearing Examiner has discretion to leave the record open for written responses by other participants.

(d) Any decision by the Hearing Examiner on the admissibility of evidence shall be final.

(5) The Hearing Examiner may impose reasonable limitations on the nature and length of testimony. In so doing the Examiner shall give consideration to:

- (a) The expeditious completion of the hearing.

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(b) The need to provide all parties a fair opportunity to present their cases.

(c) Accommodating the desires of members of the public to be heard, when public testimony is taken.

At the Hearing Examiner's discretion, irrelevant or unduly repetitious testimony may be excluded. If all testimony cannot be presented in the time available, the hearing shall be continued.

(6) Whenever the views of any formal or informal organization are to be presented, the organization shall designate a representative with authority to coordinate the presentation and to speak for the group. Any communications with the organization by the Hearing Examiner or by any party during the course of proceedings shall be through the designated representative.

(7) Prior to the conclusion of a matter, including appeals therefrom, no communications with the Hearing Examiner outside of the hearing are allowed on the merits or facts of any matter which has been or will be scheduled to come before the Hearing Examiner. This prohibition includes, but is not limited to, communications with County employees, applicants and their representatives and others participating in the hearing process.

(8) The Hearing Examiner has the option to visit the site before or after a hearing. If the Hearing Examiner conducts a post-hearing visit in response to a request made at the hearing by a party, the hearing record will be held open until the site visit is completed.

(9) The Hearing Examiner may continue proceedings or reopen proceedings for good cause any time prior to the issuance of the decision, subject to notice requirements.

(10) The Hearing Examiner may announce a decision at the hearing. The decision will be contained in a written order with supporting findings and conclusions. The order will be issued no later than ten (10) working days after the record closes.

(11) The Department of Community Development will maintain a copy of the Hearing Examiner's decision, available for public inspection, in the official file of each application or appeal. The applicant and any appellant will receive a copy of the Hearing Examiner's decision free of charge. Any other person may receive a copy upon payment of the costs of reproduction and postage.

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26.10.220 Summary tables of land use permit type categories and processes.**(1) Overview of Permit Process for Each Permit Type.**

Permit Action Type and Permit Procedure			
	Type I	Type II	Type III
Notice of application and public notice required	Yes (including: Summary notice of decision)	Yes (including: Notification of neighboring residents, posting of property, and summary notice of permit decision)	Yes (including: Posting of property, notification of neighborhood residents, and notification in local newspaper)
Public hearing required	No	No	Yes
Final decision by (decision-making body)	Administrator	Administrator	Hearing Examiner
Type of appeal process and appeal authority	Two appeals: Open record appeal hearing before Hearing Examiner followed by appeal to Superior Court or appropriate tribunal	Two appeals: Open record appeal hearing before Hearing Examiner followed by appeal to Superior Court or appropriate tribunal	Appeal to Superior Court or appropriate tribunal

(2) Categories of Land Use Permit Types.

List of Permits or Actions by Category		
Type I Administrative	Type II Administrative	Type III Quasi-Judicial (Hearing Examiner)
Boundary line adjustments and lot combinations pursuant to CCC Title <u>29</u> , Land Division Code	Short plats pursuant to CCC Title <u>29</u> , Land Division Code (new applications)	Preliminary decision on subdivisions (new, alteration, vacations) and binding site plans; all variances to CCC Title <u>29</u> , Land Division Code
Administrative interpretations pursuant to CCC <u>26.10.555</u> which are not associated with the processing of a specific permit issued by the Department of Community Development	Large lot divisions pursuant to CCC Title <u>29</u> , Land Division Code (new applications)	Zoning conditional uses and variances pursuant to CCC Title <u>33</u> , Zoning Code
Review of special reports, buffer averaging and issuance of certificate of compliance pursuant to Chapter <u>27.12</u> CCC, Critical Areas Code	Administrative variances pursuant to Chapter <u>33.57</u> CCC, Sign Code	Variances and reasonable use exceptions pursuant to Chapter <u>27.12</u> CCC, Critical Areas Code

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Alteration or vacation of a short plat or large lot division pursuant to CCC Title <u>29</u> , Land Division Code		Shoreline substantial development, conditional use and variance permits pursuant to Chapter <u>35.01</u> CCC, Shoreline Management Code, and the Clallam County Shoreline Master Program
SEPA threshold decisions not associated with other land use permits listed in this table		PUD, cluster developments, MPRs pursuant to CCC Title <u>33</u> , Zoning Code
Shoreline exemptions pursuant to Chapter <u>35.01</u> CCC, Shoreline Management Code		Variances pursuant to Chapter <u>33.57</u> CCC, Sign Code

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27.12.405 Regulated uses and activities.

Applicability of this chapter is set forth in Part One of this chapter. Unless otherwise specified in this chapter, proposals located within the jurisdiction of this chapter as it applies to geologically hazardous areas shall require:

- (1) A certificate of compliance if proposed within the jurisdiction of landslide, seismic or erosion hazard consistent with Part Seven of this chapter; or
- (2) A variance consistent with Part Seven of this chapter if proposed within a landslide hazard or its associated buffer; or
- (3) A variance consistent with Part Seven of this chapter if the standards and requirements cannot be met.

31.01.100 Authority for planning.

This Comprehensive Plan and any ordinances intended to implement this Plan are adopted under the authority of the Clallam County Charter, the Growth Management Act of 1990 (Chapter 36.70A RCW), and the Planning Enabling Act (Chapter 36.70 RCW), as now or hereafter amended.

It is the purpose and intent of this Comprehensive Plan to provide a guide for coordinated and orderly growth and development of the land and physical improvements in the unincorporated areas of Clallam County, including State lands. This Plan designates all lands within the Olympic National Forest as commercial forest lands of long-term commercial significance. The goals and policies of this Plan pertaining to such a designation shall be pursued by Clallam County in cooperation with the U.S. Forest Service. This Plan does not guide physical improvements on tribal trust lands. The County and various tribes are encouraged to work together to coordinate development plans and provide for orderly growth. Together with common goals expressing the public's interest in the conservation and wise use of our lands, this Plan provides for the orderly growth of all the various uses of land; these common goals promote the public health, safety and welfare, and encourages economic development and efficient provision of public services and facilities.

B7

Chapter 33.03 DEFINITIONS

Sections:

33.03.010 Definitions.

SOURCE: ADOPTED:

Ord. 581 12/19/95

AMENDED SOURCE: ADOPTED:

Ord. 601 07/23/96

Ord. 644 07/28/98

Ord. 725 08/06/02

Ord. 727 08/20/02

Ord. 766 12/21/04

Ord. 912 09/27/16

Ord. 918 11/29/16

33.03.010 Definitions.

For the purpose of this title, certain terms or words herein shall be interpreted as specifically defined in this chapter. All other words in this title shall carry the meanings as specified in the latest edition of Webster's New Collegiate Dictionary.

(1) "Accessory apartment" means an accessory housing unit located above the first floor of a multistoried commercial or limited industrial use building.

(2) "Accessory dwelling unit" or "ADU" means a separate dwelling unit within a single-family dwelling or a separate structure associated with a single-family dwelling which is incidental and subordinate to the primary residential use of the property. Accessory dwelling units are further defined as follows:

(a) Detached. Those accessory dwelling units that are lawfully constructed within existing outbuildings, or stand alone, where the ADU does not share a common wall with the primary residential dwelling unit. ADUs that are connected to a primary residential structure only by a covered breezeway or similar appurtenant structure shall be considered detached.

(b) Attached. Those accessory dwelling units that share a common wall or floor/ceiling with the primary dwelling unit and do not meet the definition of detached accessory dwelling unit.

(3) "Accessory housing" means an accessory single-family housing unit, the residential use of which remains a clearly incidental and subordinate use to a legally constructed primary single-family dwelling, commercial, or industrial use. "Accessory housing" includes accessory dwelling units, accessory apartments, caretaker apartments, and temporary medical hardship dwellings.

(4) "Accessory use or improvement" means a use or improvement which is necessary for the full use and enjoyment of the main use of the property, is typically associated with the main use, and is subordinate to or incidental to the main use of a parcel and which includes the utilities necessary to serve the accessory use. Accessory uses and improvements are allowed in all zoning districts.

BB

(68) "Mini-storage/self-storage" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants for the purpose of storing and removing personal property. A self-service storage facility is not a public warehouse.

(69) "Mixed-use" means development that combines two or more different land uses on the same lot or contiguous lots in the same zone, such as retail uses and residential uses.

(70) "Mobile home park" means a lot or parcel of land occupied by two or more mobile homes on a rent or lease basis, and approved by Clallam County pursuant to County regulations.

(71) "Motel/hotel" means a structure which provides overnight, short-term boarding to transient guests and not defined as a bed and breakfast inn facility.

(72) "Multiple-family dwelling" means a building containing three or more dwelling units.

(73) "Nonconforming use or structure" means a lawful structure or use existing at the time this title or any amendment thereto becomes effective, which does not conform to the requirements of the zone in which it is located.

(74) "Off-street parking" means any space specifically allocated to the parking of motor vehicles that is not located within a public right-of-way, travel lane, service drive, or any easement for public use.

(75) "Outdoor-oriented recreation facilities" means buildings, land alterations, or other facilities which are intended to provide for recreational activity including, but not limited to, campgrounds, boat launching facilities, golf courses and ball fields.

(76) "Outdoor shooting range" means a facility, commercial, public or private, and use, part of which occurs outdoors, which is established for the purpose of recreational shooting and hunter education/training. An "outdoor shooting range" includes the discharge of firearms for any lawful purposes. Accessory uses which directly relate to the use of the site as an outdoor shooting range such as campgrounds and indoor retailing of shooting supplies are included.

(77) "Parking space" means an area set aside for the parking of one motor vehicle.

(78) "Performance standards" means criteria that are established and must be met before a particular use will be permitted. These measures are designed to guide development of property and include, but are not limited to, open space requirements, water and wastewater requirements, buffer zones, screening, size and height limits for buildings, noise, vibration, glare, heat, air or water contaminants, and traffic.

(79) "Permitted use" means an activity or structure which is either allowed in a zone pursuant to this chapter without conditions or formal action by the County, or is identified as a conditional use.

(80) "Person" means a man, woman, firm, association, partnership, political subdivision, government agency, corporation or any other human entity whatsoever.

(81) "Primary dwelling unit" means a structure consistent with the definition of "single-family dwelling," as set forth in this section; provided, that this definition applies to those single-family residential structures on parcels where an accessory dwelling unit, consistent with the standards of Chapter 33.50 CCC, is also present.

33.10.015 Rural Neighborhood Conservation (NC).

(1) Purpose. Maintain low density rural residential areas and associated uses consistent with the local character of the distinctive regions and neighborhoods found within the Rural Neighborhood Conservation (NC) zoning district. Lands within the NC zone, or vicinity of such areas, are generally characterized by an existing wide range and variety of rural residential lot sizes and densities and rural uses. The NC zone is also intended to direct development in small, isolated rural areas located along the limited transportation corridors of western Clallam County otherwise dominated by forest and park lands. These western NC zones are vital for accommodating rural lifestyles and supporting rural based economies that enable residents to both live and work in rural areas.

(2) Allowed Land Uses. The following land uses are allowed outright in the NC zoning district:

- Agriculture.
- Bed and breakfast inns.
- Commercial horse facility.
- Family day care provider.
- Home enterprises.
- Rural Neighborhood Conservation overlay developments.
- Rural Neighborhood Conservation cluster developments.
- Single-family dwelling unit.
- Timber harvesting.

(3) Conditional Land Uses. The following land uses are permitted in the NC zoning district subject to a conditional use permitting process with public input and a determination that the proposed use is consistent with applicable land use regulations and the character of the neighborhood:

- Cemeteries.

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- Child day care center.
- Churches.
- Commercial greenhouse or nursery.
- Duplex.
- Home-based industries.
- Kennel.
- Lodges.
- Mineral extraction.
- Outdoor-oriented recreational activity.
- Primitive campgrounds.
- Private schools with less than 50 students.
- Public buildings and facilities.
- RV parks (Western Planning Region and western portion of the Straits Planning Region only).
- Veterinarian clinic.
- Timber labor camps.

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- Wood manufacturing (small-scale).

(4) Prohibited Land Uses. All other uses not listed under subsections (2) and (3) of this section are prohibited unless authorized as a similar use pursuant to CCC 33.40.050.

(5) Maximum Residential Density. One dwelling unit per five acres or 1/128 of a standard section subdivision, except as provided for residential Neighborhood Conservation overlay and Neighborhood Conservation cluster developments in subsections (10) and (11) of this section.

(6) Minimum Lot Size. One acre, except as provided for residential Neighborhood Conservation cluster developments in subsection (11) of this section.

(7) Minimum Lot Width. 75 feet.

(8) Maximum Width to Depth Ratio. 1:5.

(9) Setbacks.

(a) Front yard: 45 feet from a local access street, 50 feet from an arterial street, 60 feet from a highway.

(b) Side yard: 10 feet or 40 feet from the centerline of the right-of-way of a side street, whichever is greater. Private streets must serve three or more parcels.

(c) Rear yard: 15 feet or 40 feet from the centerline of the right-of-way of a rear street, whichever is greater. Private streets must serve three or more parcels.

(d) From Commercial Forest and Agriculture Retention Resource Zones: 50 feet (20 feet for accessory structures).

(10) Rural Neighborhood Conservation Overlay (NCO). The Rural Neighborhood Conservation overlay (NCO) provides for an alternative method for residential development in areas of the Rural Neighborhood Conservation zoning district that are substantially developed and characterized by densities greater than the underlying one dwelling unit per five-acre density. The NCO is intended to apply in areas where additional rural density would be consistent with the developed neighborhood character and uses, while ensuring for the provision of adequate rural infrastructure, compliance with public health and safety requirements, and protection of critical areas.

(a) NCO Applicability. To qualify for an NCO development, the following criteria must be met.

(i) Development Size. The gross acreage of the NCO development must be a minimum of 4.8 acres in size and be a maximum of 11 acres or less in size, and may be comprised of multiple adjacent parcels.

(ii) Built Environment. The surrounding neighborhood character must demonstrate that at least 70 percent of parcels within 500 feet of property boundary are developed (including residential) with an average lot size less than five acres. Where an existing NCO and/or NCC development is located within 500 feet of the property, the built environment of the existing NCO and/or NCC development shall be the condition that existed on the original parent parcel(s) prior to County final approval.

(b) NCO Maximum Residential Density. Residential density for a NCO development is limited to a maximum residential density no greater than the average developed lot density existing within 500 feet of the property, but

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shall not exceed a gross density of one dwelling unit per 2.4 acres. Developed lots that qualify for calculating the average lot density of the surrounding neighborhood are subject to subsection (10)(a)(ii) of this section, except that developed lots located within LAMIRDs and urban growth areas shall not be included in calculating the average lot density.

(c) NCO Minimum Lot Size. Lots sizes may vary; provided, that no lot shall be less than one acre; and provided further, that the development will not exceed the maximum residential density allowed under subsection (10)(b) of this section.

(d) NCO Design Criteria.

(i) Lot Dimensions and Setbacks. All lots shall meet the provisions of subsections (7), (8), and (9) of this section.

(ii) Road Frontage. All new lots shall have adequate access provided by dedicated public streets or private streets to County standards ensuring that emergency vehicles can reach development on the lots.

(e) NCC Consistency Review. All NCC developments must demonstrate compliance with other applicable regulations and permits, including but not limited to: adequate provisions for water supply and wastewater treatment/disposal, protection of critical areas and shorelines as provided under the Clallam County Critical Areas Code, Chapter 27.12 CCC, and Clallam County Shoreline Master Program (SMP); County subdivision requirements as provided under CCC Title 29, Subdivisions; and environmental review under the State Environmental Policy Act (SEPA), Chapter 43.21C RCW.

(11) Rural Neighborhood Conservation Cluster (NCC). The Rural Neighborhood Conservation cluster (NCC) provides for an alternative method for residential development within the Rural Neighborhood Conservation zoning district. The intent is to encourage creative site designs of subdivisions to encourage keeping larger, contiguous rural lots and open space tracts, retain features of rural character associated with the land to be divided, and reduce the area of rural lands used for roads, utilities, driveways, and other impervious surfaces. The NCC zone is also intended to encourage re-design of areas previously divided into five-acre, grid type development patterns that were generally based on equal division of property, ease of survey, and exemption from state and local subdivision laws rather than on a lot layout designed to retain rural character, reduce fragmentation of fish and wildlife habitat corridors, or support traditional rural lifestyles and rural-based economies.

(a) NCC Objectives. The design of a NCC development requires an inventory and evaluation of on-site and surrounding natural features and land uses. The following design objectives must be considered, but are not intended to be exhaustive or listed in any order of priority. Proposed cluster developments are expected to substantially meet these objectives:

(i) Ensure that rural open spaces predominate over the built environment. For the purposes of this section, "rural open spaces" is meant to include natural landscapes and vegetation (preferably vegetation indigenous to the North Olympic Peninsula), and farmland and forest lands that support rural-based economies.

(ii) Incorporate site features such as topography, vegetation, critical areas, views from public roads and adjacent properties, and pre-existing development that are important to ensuring that the development has no significant adverse impacts.

(iii) Minimize alteration of significant natural features and landscapes.

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- (iv) Maintain or enhance fish and wildlife habitat corridors and strive to connect to existing corridors on adjacent lands.
 - (v) Locate development sites away from critical areas and other environmentally sensitive areas, and minimize fragmentation of such areas.
 - (vi) Retain and protect existing significant or unique natural or cultural features including, but not limited to, mature trees, rare or unique plant communities, historical structures, cultural and archeological sites, etc.
 - (vii) Reduce the conversion of rural lands to road and utility corridors and decrease impervious surface coverage.
 - (viii) Promote compatibility among land uses within the development and outside the development, and minimize impacts of noise, traffic and incompatible uses.
 - (ix) Support retention of larger lots that foster rural lifestyles and rural-based economies.
 - (x) Protect against conflicts with agriculture, forestry, and mining on adjacent lands designated Agricultural Retention, Commercial Forest, or Mineral Resource.
 - (xi) Assure visual compatibility of rural development with the surrounding rural area and maintain visual landscapes that are traditionally found in County rural areas and neighborhoods such as natural open spaces, farmlands, and forest lands.
- (b) NCC Applicability. To qualify for a NCC development, the following criteria must be met:
- (i) Development Size. Eleven acres (may be comprised of several adjacent parcels, whether or not in common ownership).
 - (ii) Number of Lots. NCC developments must result in the creation of three or more lots, with a minimum of two planned for residential development.
- (c) NCC Maximum Residential Density. One dwelling unit per 2.4 acres.
- (d) Water Supply. All new lots planned for residential development must be served by an existing or new Group A or Group B public water system.
- (e) NCC Rural Large Lot or Permanent Open Space Tract. NCC developments must retain a rural large lot or permanent rural open space tract that meets all of the following minimum criteria:
- (i) Size. Retains a minimum of 70 percent of the gross acreage of the NCC development as a large rural lot, set aside under a permanent open space easement, or set aside as permanent open space owned and maintained by a homeowners' association.
 - (ii) Design Objectives. The selected location and design (e.g., configuration) of the rural lot or open space tract demonstrates consistency with the spirit and intent with the NCC design objectives under subsection (11)(a) of this section.
 - (iii) Use. Land uses are limited to:

- Rural open spaces pursuant to NCC Objectives, subsection (11)(a)(i) of this section.
- Allowed land uses pursuant to subsection (2) of this section; provided, that buildings and associated improvements are limited to no more than 1.5 acres and that the area outside of this building envelope will retain a minimum 70 percent of the gross acreage of the NCC development characterized by rural open spaces pursuant to NCC Objectives, subsection (11)(a)(i) of this section. The building envelope must be shown on the NCC preliminary site plan and the face of the final plat.

(f) NCC Residential Cluster Areas. Planned residential areas located outside of the rural large lot or permanent open space tract designated under subsection (11)(e) of this section must meet the following criteria:

(i) Design Objectives. The selected location and design (e.g., configuration) of residential development areas must demonstrate consistency with the spirit and intent with the NCC design objectives under subsection (11)(a) of this section.

(ii) Minimum Lot Size. Three-quarters acre (0.75 acre).

(iii) Lot Dimensions and Setbacks. All lots shall meet the provisions of subsections (7), (8), and (9) of this section, except where an increased building setback is required pursuant to subsection (11)(f)(v) of this section.

(iv) Cluster Size and Separation of Clusters. No more than eight adjacent lots may be clustered without providing at least 200 feet of separation between clusters.

(v) Building Setbacks and Visual Buffers. Residential cluster areas consisting of three or more lots must provide for a minimum 50-foot-wide building setback and visual buffer between the developed portions of the clustered residential area and a public street, private roads that serve lots outside the NCC development, or outer boundary of the NCC development, except where the street or neighboring lands are located within an urban growth area or designated limited areas of more intensive rural development.

(vi) For purposes of the this subsection (11), "rural open space" is defined as that portion of a subdivision or short subdivision set aside and permanently dedicated for active or passive recreation, commercial timber and agricultural related uses, critical area protection, natural resource or archaeological site preservation, wildlife habitat, and/or visual enjoyment. Such rural open spaces are subject to the following provisions:

(A) A permanent open space reserve area shall be protected using one of the following mechanisms:

- A nonbuilding area owned in common by all lots within the subdivision; or
- Covered by a protective easement or public or private land trust dedication; or

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- Preserved through an appropriate permanent protective mechanism, such as a restrictive covenant, approved by the County zoning administrator or Hearing Examiner.

(B) The purpose of the rural open space reserve area as defined herein shall be recorded on the face of the final plat or short plat and shall constitute an agreement between Clallam County and the current/future owner(s) of record that shall run with the land. Said restriction(s) may be amended by mutual agreement between said parties after review for consistency and compliance with the official Clallam County Zoning Ordinance, the Clallam County Subdivision Ordinance, and the Clallam County Comprehensive Plan.

The NCC development proposal shall demonstrate how existing vegetation (e.g., major tree stands), slopes, natural features, plantings, or combination thereof will avoid or significantly mitigate visual impacts in the buffer area. Where plantings are needed, a minimum 10-foot-wide landscaped buffer is required that meets County minimum plant density and standards for visual buffers pursuant to Chapter 33.53 CCC, Landscaping Requirements. Site designs that use native vegetation (especially trees) and topography to provide visual buffers are preferred. The visual buffer may provide for view corridors not exceeding 30 percent of the length of the buffered corridor. The final NCC plat shall indicate responsibility for the retention and maintenance of the visual buffer.

(g) NCC Consistency Review. All NCC developments must demonstrate compliance with other applicable regulations and permits, including but not limited to: adequate provisions for water supply and wastewater treatment/disposal, protection of critical areas and shorelines as provided under the Clallam County Critical Areas Code, Chapter 27.12 CCC, and Clallam County Shoreline Master Program (SMP); County subdivision requirements as provided under CCC Title 29, Subdivisions; and environmental review under the State Environmental Policy Act (SEPA), Chapter 43.21C RCW.

(h) Alternative Site Designs. Alternative site designs to the provisions of subsections (11)(e)(f) of this section may be allowed if, upon review by the review authority, they are determined to meet the NCC design objectives of subsection (11)(a) of this section and provide for a design that provides for substantially equivalent protection given the special or unique features of the NCC development site in relationship to surrounding areas.

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33.27.040 Hearing Examiner action.

(1) Any person interested in an application for a conditional use permit may appear at the hearing set for review thereof and comment on the application. After completion of its public hearing, the Hearing Examiner shall approve the application if the Hearing Examiner finds that:

(a) The proposed action is consistent with the spirit and intent of the Clallam County Comprehensive Plan.

(b) The proposed action is consistent with this title.

(c) The proposed action is consistent with land uses within the zoning district in which it is located and in the vicinity of the subject property.

(d) The proposed action will have no unreasonable adverse impact on the surrounding land uses which can not be mitigated through the application of reasonable conditions.

(2) The Hearing Examiner may attach to any permit approval such reasonable conditions as may be necessary to assure that development will comply with the criteria for approval. Such conditions may include, but not be limited to the following: Construction sequence and timing, operation and maintenance, duration of use, removal of development upon termination of use, compliance with approved engineering plans and specifications, off-street parking, setbacks, special screening, lighting, site access, site size, road dedications, signing, structure height, siting of structures and improvements, strategies to minimize adverse environmental impacts as specified in the environmental analysis required by the County Environmental Policy Code, Chapter 27.01 CCC.

(3) When the Hearing Examiner determines that additional information is necessary, action on said application shall be continued until such information is available; provided, that the extension shall not exceed thirty (30) days unless the applicant consents to a longer period. Following its review of the additional information, the Hearing Examiner shall take action on the application.

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33.30.010 Variances – Application.

A request for a variance shall be made on forms provided by the Administrator and shall contain the information found in CCC 33.37.020. Before an application for a variance shall be acted upon, all of the matters relating to the application shall be reviewed by the Administrator and public agencies affected by the variance. The Administrator's findings together with interested agencies comments shall be transmitted to the Hearing Examiner for his/her consideration no later than six (6) days prior to the Hearing Examiner's consideration of the application. The Director shall coordinate review of the application with public agencies that have an interest in the application.

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33.30.020 Applicability.

A variance may be granted from the minimum standards of this regulation; provided, that a variance may not be allowed regarding minimum lot size, maximum density or land uses permitted in each zone. The reduction of a minimum lot size in essence increases land use density and is in effect a rezone to higher density.

33.30.030 Required showing for a variance – Approval.

Before a variance shall be granted, it shall be shown:

- (1) That because of special circumstances applicable to subject property including size, shape, topography and location, the strict application of this regulation would deprive subject property owner of rights and privileges enjoyed by other property owners in the vicinity and within the same zone as set forth in the official zoning map;
- (2) That the granting of the variances will not be materially detrimental to the public health or injurious to property or improvements thereon;
- (3) That the granting of the variance will not materially compromise the goals and policies of the Comprehensive Plan or the spirit of this regulation; or
- (4) That approval of the variance will not constitute a grant of special privilege.

The Hearing Examiner shall approve of the variance request if it finds that all of the above circumstances apply to the request. Upon approval by the Hearing Examiner of any variance, the Hearing Examiner may attach such conditions including, but not limited to, those specified in CCC 33.27.040(2) to its approval as will assure that the development will conform to the spirit and intent of this regulation and the County Comprehensive Plan and be compatible with adjacent land uses.

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33.43.080 Destruction of a nonconforming structure.

(1) Partial Destruction. When a nonconforming structure is damaged by natural causes, but the extent of damage is less than fifty (50) percent of the replacement cost of the structure, the nonconforming structure may be reconstructed to the configurations existing immediately prior to the time the structure was damaged. Such reconstruction must be completed within eighteen (18) months of said damage.

(2) Substantial Destruction. When a nonconforming structure is damaged by natural causes to an extent exceeding fifty (50) percent of the replacement cost of the entire building, it shall not be repaired or reconstructed unless it is done so to conform to the development requirements of the zone in which the structure is located, unless a variance is issued by the Board of Adjustment or Hearing Examiner.

The extent of damage shall be determined upon review of construction estimates by the Zoning Administrator.

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33.43.120 Cessation of a nonconforming use.

If a nonconforming use ceases, it shall be continued not later than eighteen (18) months following cessation in order to maintain its status as a legal nonconforming use. If the nonconforming use is not continued within eighteen (18) months, subsequent use shall be in compliance with the minimum standards of the zone which is applicable.

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33.47.010 Home enterprise minimum standards.

Home enterprises locating in noncommercial, nonindustrial zones are subject to the following minimum standards:

- (1) The home enterprise is carried on entirely within legally constructed structures on the property and is clearly subordinate to the residential use.
- (2) The operator of the business lives in the residential structure as his or her primary residence.
- (3) The business is operated in a manner as to not give any outward appearances or manifest characteristics of a business other than the display of an information sign as provided in subsection (7) of this section.
- (4) There are no displays or storage of salvage materials, or partially finished merchandise outside of the structure. Additionally, if the business involves work with vehicles or machinery, there shall be no storage or work performed on such vehicles or machinery outside the structure(s).
- (5) The business does not involve equipment operations or processes which introduce noise, smoke, dust, fumes, vibrations, odors, glare or other nuisance characteristics or hazards beyond those associated with the normal residence which can be detected off premise or in some way adversely effect neighboring property.
- (6) The business does not increase local vehicular traffic beyond what could be reasonably expected from other legal uses of the residential property.
- (7) Only one sign is used for identification purposes and is attached to the residential structure; provided, that if the sign cannot be seen from the road if attached to the house, and cannot reasonably serve as identification because of special features like unusually deep setbacks, extensive vegetative buffering or other features, the sign may be placed in the front yard or along the fronting road. Such sign is unlighted and does not exceed six (6) square feet.
- (8) On-premises parking of vehicles associated with the home enterprise shall not be construed as a significant outdoor activity; provided, the number and size of the vehicles does not exceed what could be reasonably expected to be generated by other legal uses of the residential property. Only one vehicle with an axle rating greater than 30,000 pounds may be parked outside when associated with a home enterprise or home-based industry, except that additional vehicles may be allowed when they are not readily visible. A business which maintains an in-home office, but conducts all other operations off-site, may designate one vehicle of any size (i.e., a logging truck or moving van) as a commuter vehicle which may be legally parked on the residential parcel, providing it does not infringe on public or private roadways.

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Chapter 33.49 WIRELESS COMMUNICATIONS FACILITIES

Sections:

- 33.49.100 Purpose and goals.
- 33.49.200 Applicability and exemptions.
- 33.49.300 Definitions.
- 33.49.400 Site location of wireless communication facilities.
- 33.49.410 Site priorities.
- 33.49.500 Development standards.
- 33.49.510 General standards.
- 33.49.520 Performance standards.
- 33.49.530 Variances.
- 33.49.600 Permit process.
- 33.49.610 Temporary WCF.
- 33.49.620 Process review table.
- 33.49.630 Application submittal.
- 33.49.640 Third party review.
- 33.49.650 Permit fees.
- 33.49.700 Abandonment and removal.

SOURCE: ADOPTED:

Ord. 703 01/23/01

AMENDED SOURCE: ADOPTED:

Ord. 818 04/03/07

33.49.100 Purpose and goals.

(1) Purpose. In recognizing the value of the visual and aesthetic resources of Clallam County to its residents and visitors as well as the importance of preserving private property values, the purpose of this chapter is to provide guidance for siting and development of wireless communications facilities (WCFs). Provisions contained herein are intended to minimize adverse impacts to visual corridors, including views of the Olympic Mountains, forested foothills, agricultural resource lands, rural vistas, the Strait of Juan de Fuca, and other aesthetic features important or unique to Clallam County. Additionally, this chapter recognizes the need for the advancement of wireless communications and therefore provides guidance for continued telecommunications opportunities.

(2) Goals. While remaining consistent with the provisions set forth in the Federal Telecommunications Act of 1996, the overall goal of this chapter is to protect visual and aesthetic features of Clallam County. These features are vitally important to the welfare and interests of County residents, and to the health of the County's tourism industry. While providing continuing opportunities for effective wireless communication services throughout the County, this chapter seeks to improve the efficiency of the permitting process, thus allowing for greater consistency and timely processing of applications. The following specific goals are intended to protect the health, safety, and welfare of the citizens of Clallam County, and to provide for planned development consistent with the Clallam County Comprehensive Plan:

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- (a) Manage wireless telecommunications facilities siting consistent with the Clallam County Comprehensive Plan while protecting the scenic resources, property rights, and rural characteristics of Clallam County;
- (b) Accommodate an increased need for effective, efficient wireless communication services;
- (c) Facilitate the development of dependable, redundant "in-vehicle" wireless communications services for Clallam County citizens and visitors;
- (d) Strongly promote and encourage co-location of new and existing wireless communications antenna array sites to minimize the total number of towers throughout the County;
- (e) Encourage new support towers and antenna arrays to be located in areas of mature timber stands where adverse and potential impacts on the community are minimized;
- (f) Encourage careful consideration of topography and location to ensure sites have minimal impact on important views of the Olympic Mountains, foothills, the Strait of Juan de Fuca, and rural vistas;
- (g) Encourage the location of support towers and antenna arrays in nonresidential areas;
- (h) Encourage careful design, siting, landscape screening, and innovative camouflaging techniques in development of new wireless communication facilities;
- (i) Ensure timely and predictable processing of State and County-mandated permit processing guidelines; and
- (j) Maintain the public health, safety, and welfare.

33.49.200 Applicability and exemptions.

(1) Applicability. The standards and process requirements of this chapter shall supersede all conflicting requirements of all other codes and ordinances, except when conflicting requirements regarding protection of the environment arise, the more restrictive regulation shall apply. All telecommunications facilities which are not exempt pursuant to this section shall conform to the standards specified in this chapter.

(2) Exemptions. The following are exempt from the provisions of this chapter and shall be allowed in all zones:

(a) Wireless communication facilities which were legally established prior to the effective date of this chapter shall not be subject to the requirements of this chapter except:

(i) Such facilities shall provide reasonable opportunities for co-location of other carriers pursuant to CCC 33.49.510(1);

(ii) Such facilities shall comply with provisions requiring RF emissions reporting pursuant to CCC 33.49.510(5), Health, Safety and Welfare Hazards;

(b) Temporary governmental wireless communication facilities used for temporary emergency communications in the event of a disaster, emergency preparedness, and public health or safety purposes;

(c) Two-way communication transmitters used for temporary or emergency services including, but not limited to fire, police, and ambulance services;

(d) Licensed amateur (Ham) radio stations and citizen band stations;

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(e) Any maintenance, reconstruction, or repair of previously approved wireless communication facilities provided that such activity does not increase height, width, or mass of the facility;

(f) Roof-mounted dish antennas used for residential purposes, and VHF and UHF receive-only television antennas, provided they are fifteen (15) feet or less above the existing or proposed roof of the associated residential structures.

33.49.300 Definitions.

(1) "Administrator" means the Director of the Department of Community Development of Clallam County or his/her designee.

(2) "Antenna" means any pole, panel, rod, reflection disc or similar device used for the transmission or reception of radio frequency signals, including, but not limited to omni-directional antenna (whip), directional antenna (panel), microcell, and parabolic antenna (dish). The antenna does not include the support structure or tower defined herein.

(3) "Array" means the combination of antennas mounted upon a support structure.

(4) "Attached antenna" means any antenna that is connected to or affixed to a support structure.

(5) "Attached WCF" means an attached antenna.

(6) "Attachment device" means any object used to attach an antenna to an existing building or structure.

(7) "Auxiliary support equipment" means all equipment necessary and/or desirable to process wireless communication signals and data, including but not limited to, electronic processing devices, air conditioning, emergency generators, and cabling interface devices. For the purposes of this chapter, auxiliary equipment shall also include the shelter, cabinets, and other structural facilities used to house and shelter necessary equipment. Auxiliary equipment does not include support towers or structures.

(8) "Average tree height" refers to the average height of the existing tree skyline within forested buffers as described by CCC 33.49.520(3), Landscaping and Screening. Average tree height shall be determined by utilizing the U.S. Department of Agriculture Soil Conservation Service Soil Survey for Clallam County in conjunction with the Weyerhaeuser Forestry Paper #8, July, 1966, Site Index Curves.

(9) "Binding site plan" means a drawing to a specified scale, which: (a) identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by the appropriate regulation; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by Clallam County; and (c) contains provisions making any development conform with the site plan. A binding site plan creates lots for the purpose of lease or rent, not for sale or transfer.

(10) "Camouflage" means the use of both existing and future technology through which a wireless communications facility (WCF) is designed and constructed to resemble an object that is not a WCF and which is typically present in the environment.

(11) "Co-location" means use of a common wireless communications support structure or tower by two or more wireless license holders for two or more antenna arrays.

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(12) "Federal Aviation Administration (FAA)" means the federal regulatory agency responsible for the safety of the nation's air traffic control system, including airspace impacted by wireless communications support structures and towers.

(13) "Federal Communications Commission (FCC)" means the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.

(14) Height. When referring to a wireless communications facility, "height" shall mean the distance measured from the original grade at the base of the tower to the highest point on the wireless communication facility support structure, including the antenna(s).

(15) "Infrastructure provider" means an applicant whose proposal includes only the construction of new support towers or auxiliary structures to be subsequently utilized by other service providers.

(16) In-Vehicle Service. For the purposes of this chapter, "in-vehicle service" shall refer to the level of service which provides for the transmission of telecommunications signals to and from vehicles. This level of service shall extend to all urban areas, major and minor arterials and major collectors within the Clallam County roads system.

(17) "Microcell" means a wireless communications facility consisting of an antenna that is either: (a) four (4) feet in height and with an area of not more than 580 square inches; or (b) if a tubular antenna, no more than four (4) inches in diameter and no more than six (6) feet in length.

(18) "Monopole" means a structure composed of a single spire used to support one or more antenna(s).

(19) "Power pole replacement" means placement of low-profile whip antennas or other microcell arrays on existing structures such as power poles, light standards, and light poles for street and parking lots. Power pole replacement proposals shall not be considered new support towers.

(20) "Radiofrequency (RF) energy" means the energy used by cellular telephones, telecommunications facilities, and other wireless communications devices to transmit and receive voice, video and other data information.

(21) Residential-Related. For the purpose of this chapter, "residential-related" shall refer to districts or zones in which single-family residences and duplexes are listed as an allowed use pursuant to CCC Title 33. The zoning districts that fall into this category are as follows:

RURAL	URBAN	COMMERCIAL
R5	URH	RC
RW5	URL	CC
R2	VLD	RV
RW2	LD	CEN
R1	VLD/LD	WRC
RW1	MD	TC
QR	CR	CV
		CN

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		CC
		UC

(22) "Setback" means the required distance from any structural part of a wireless communication facility (including support wires, support attachments, auxiliary support equipment and security fencing) to the property line of the site parcel on which the wireless communication facility is located.

(23) "Support structure" means an existing building or other structure to which an antenna is attached, including, but not limited to, utility poles, signs, water towers, any accompanying pole or device, attachment device, or transmission cables. Support structures do not include support towers or any building or structure used for residential purposes.

(24) "Support tower" means a structure designed and constructed exclusively to support a wireless communication facility or an antenna array, including monopoles, self-supporting towers, guy-wire support tower, and other similar structures.

(25) "Temporary wireless communication facility (temporary WCF)" means any wireless communication facility which is to be placed in use for not more than sixty (60) days, is not deployed in a permanent manner, and does not have a permanent foundation.

(26) "Wireless communications" shall mean any personal wireless services as defined by the Federal Telecommunications Act of 1996, including cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar FCC licensed commercial wireless telecommunications services that currently exist or that may in the future be developed.

(27) "Wireless communications facility (WCF)" means any unstaffed facility for the transmission and/or reception of radio frequency (RF) signals, which includes, but is not limited to, all auxiliary support equipment, any support tower or structure used to achieve the necessary elevation for the antenna, transmission and reception cabling and devices, and all antenna arrays.

33.49.400 Site location of wireless communication facilities.

(1) In reviewing applications for new WCFs, Clallam County shall evaluate proposals in relation to the following site preferences 1 through 3. Criteria for prioritizing preference areas and siting include:

- (a) Minimization of total number of towers throughout Clallam County;
- (b) Protection of visual resources (e.g., views of the Olympic Mountains and the Strait of Juan de Fuca, foothills, agricultural resource lands, rural vistas);
- (c) Protection of residential characteristics and property values;
- (d) Protection of visual resources as seen from Highway 101 and Highway 112; and
- (e) Protection of public health, safety, and welfare.

(2) The following preference area descriptions shall apply only to new support tower proposals: New wireless communications facilities locating in the following preference areas shall be in conformance with all applicable standards as provided by this chapter.

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(a) Preference 1: Preference 1 shall include the following Commercial Forest zones:

- (i) Commercial Forest (CF); and
- (ii) Commercial Forest/Mixed Use 20 (CFM20).

(b) Preference 2: Preference 2 shall include the following zones:

- (i) Commercial Forest/Mixed Use 5 (CFM5);
- (ii) Rural Very Low (R20);
- (iii) Rural Low (R5);
- (iv) Western Region Rural Low (RW5);
- (v) Rural Character Conservation 5 Zone (RCC5);
- (vi) Rural Character Conservation 3 Zone (RCC3); and
- (vii) Rural Low Mixed (RLM).

(c) Preference 3: Underlying zones in Preference 3 areas shall include all other zones as defined by this title.

33.49.410 Site priorities.

The following is a listing of priorities Clallam County has identified as the uses and locations preferred for siting wireless communications facilities. The priority list is to be utilized in evaluating WCF proposals and is arranged in descending order with the highest preference first:

- (1) Co-location with legally existing WCFs on support structures or support towers in nonresidential related districts;
- (2) Co-location with legally existing WCFs on support structures or support towers in residential related districts;
- (3) "Power pole replacement" proposals as provided by CCC 33.49.510(2);
- (4) New attached WCFs on support structures not currently used for other WCFs, in nonresidential related districts;
- (5) New support towers located in Preference 1 areas (CCC 33.49.400(2)(a));
- (6) New attached WCFs on support structures not currently used for other WCFs, in residential related zones, provided that proposals shall make reasonable efforts to target property not used exclusively for residential purposes;
- (7) New support towers located in Preference 2 areas (CCC 33.49.400(2)(b));
- (8) New support towers located in Preference 3 areas (CCC 33.49.400(2)(c));
- (9) Locations other than those listed above.

33.49.500 Development standards.

The standards set forth in this section are intended to address and minimize potential visual, aesthetic, and safety concerns in the development of WCFs. The siting standards as defined by this section do not exempt the siting of

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support towers from any additional requirements in this chapter or any other applicable land use regulation. In the event of a conflict between any requirements within this chapter, or any other land use regulation, the more restrictive requirement shall apply.

33.49.510 General standards.

(1) Co-location. Wireless communication facilities shall co-locate to the greatest extent possible to minimize the total number of communication towers throughout the County. To this end, the following guidelines shall apply:

(a) Existing WCFs shall provide for co-location unless the facility is structurally, technologically, or otherwise demonstrably unsuitable for co-location.

(b) Applicants of new support tower proposals shall demonstrate a "good faith" effort to co-locate with other carriers by:

(i) Contacting all other licensed carriers for wireless communications within the intended service area;

(ii) Sharing information necessary to determine if co-location is feasible. Feasibility shall be determined by factors including, but not limited to, availability of existing towers, structural capabilities of existing towers, and compatibility of existing and proposed facilities;

(iii) In the event co-location is found to be feasible, the applicant shall utilize the existing facility;

(iv) In the event co-location is found to be unattainable, the applicant shall demonstrate to the Review Authority the following:

(A) No existing towers or structures are located within the geographic area required to accommodate efficient and effective operation of the facility at an "in-vehicle" level of service;

(B) Existing towers or structures do not meet minimum structural specifications or cannot be reconfigured to achieve sufficient height for efficient and effective operations at an "in-vehicle" level of service;

(C) Co-location would cause a nonconformance situation (e.g., exceeding height restrictions);

(D) Co-location would result in electromagnetic interference with existing or proposed installations;

(E) A financial agreement between the applicant and the owner(s) of existing facilities could not be reached;

(F) There exist other limiting factors that substantially preclude co-location.

(v) The County shall deny a land use permit if the applicant does not demonstrate a "good faith" effort to co-locate on an existing facility.

(vi) Infrastructure providers shall be exempt from the "good faith" requirements of this subsection (1)(b); provided, that infrastructure providers shall express the need for a proposed support tower by demonstrating a lack of existing co-location opportunities within the intended service area, pursuant to CCC 33.49.630(5), Application submittal.

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(c) Carriers who co-locate on existing towers or structures shall be allowed to construct or install accessory equipment and shelters as required for facility operation. Such development shall be subject to regulations under the Uniform Building Code (UBC), applicable development standards of the underlying zone, and applicable development standards pursuant to this chapter (e.g., lighting, security, signage).

(d) Communication towers allowed under this chapter shall be designed to accommodate co-location. The following provisions shall apply:

(i) All new communication towers shall accommodate co-location opportunities for a minimum total of three carriers unless proven unfeasible and so demonstrated pursuant to CCC 33.49.630(5);

(ii) An owner of a WCF approved under this chapter shall not deny a wireless provider the ability to co-locate on their facility at a fair market rate or at another cost basis agreed to by the affected parties;

(iii) Applicants for new communications towers shall contact all law enforcement, fire, and other public safety and emergency services agencies within the County prior to application submittal. All new WCFs approved under this chapter shall be designed for, and the owner shall not deny, co-location of emergency services and public safety agencies' radio and communication equipment at fair market value or other cost basis as agreed by the parties.

(2) "Power Pole Replacement." Placement of low-profile whip antennas or other microcell arrays on existing structures such as power poles, light standards, and light poles for street and parking lots shall be encouraged. The existing structure may be replaced with a similar diameter pole not exceeding 20 additional feet in height. The pole extension may not exceed the diameter of the pole at the mounting point. Power pole replacement proposals shall not be considered new support towers, and parcel size, setback, landscaping, and screening requirements of this chapter shall not apply.

(3) New Support Tower Installations. Except as provided by subsection (3)(e) of this section, the following general standards shall apply to new support towers:

(a) Between the eastern County boundary and the Elwha River, and north of Highway 101, applicants for new WCFs shall either:

(i) Utilize technology other than that which necessitates the construction of a support tower; or

(ii) Construct any new support tower using camouflage technology (i.e., camouflaging a tower to resemble a conifer). Such technology shall be in conjunction with the standards set forth by 33.49.520(3), Landscape and Screening;

(b) New support tower installations shall be a minimum of 1,000 feet from either State Route 101 or State Route 112;

(c) New support towers shall be a minimum of 1,000 feet from all parcels containing public and private schools, public parks, and sites listed on either the Washington State or National Register of Historic Places;

(d) Following the date of adoption of this chapter, one additional new support tower may be installed at any given existing WCF site; provided, that all of the following criteria are met:

(i) The existing site is within a Preference 1 area;

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(ii) The proposed support tower does not exceed the height of the tallest existing tower on site;

(iii) The proposed tower does not require lighting pursuant to FAA regulations; and

(iv) The proposal conforms to all other applicable provisions of this chapter;

(e) For all new tower proposals where the installation site is to be divided for the purpose of lease or rent, approval of a binding site plan shall be required in accordance with Chapter 58.17 RCW, Plats – Subdivisions – Dedications, and Chapter 29.20 CCC, Final Plat Requirements and Process.

(4) Compliance with Other Regulations. In addition to the provisions of this chapter, all WCF proposals shall also be subject to all other applicable standards and regulations, including, but not limited to, the Uniform Building Code (UBC), Clallam County Critical Areas Code (Chapter 27.12 CCC), FCC and FAA regulations, Clallam County Zoning Code (this title) and the National Electrical Code (NEC5).

(5) Health, Safety and Welfare Hazards. If it is found that WCFs are or will be detrimental to the health, safety, or welfare of persons working or residing near such facilities, then the service provider(s) and property owner shall be jointly and solely responsible for the removal, adjustment, or replacement of the WCFs. In no case shall a WCF remain in operation if it is found to create a hazard to health, safety, and welfare. For the purposes of this chapter, a WCF shall not be found to create a hazard to health, safety, or welfare as a result of radio frequency radiation/electromagnetic frequency (RF/EMF) emissions from the WCF, so long as it meets all current standards established by the FCC, pursuant to FCC OET 65 and its successors.

The owner/operator of each WCF shall annually submit a written verification to the Administrator that the radio frequency radiation/electromagnetic frequency (RF/EMF) emitted by a WCF conforms to safety standards set forth in FCC OET 65. The reports shall conform to reporting requirements set by the FCC.

If the WCF's emissions are determined to exceed FCC standards, the applicant is required to pay for such other tests and other corrective measures as are necessary to establish compliance with FCC OET 65 and its successors, and such noncompliance shall constitute sufficient grounds for the Administrator to issue a stop work order or pursue other remedies pursuant to the provisions of CCC Title 20, Code Compliance, to the extent not precluded by State or federal law.

(6) Level of Service. Wireless communication facilities subject to the provisions of this chapter shall provide a level of service throughout Clallam County described as "in-vehicle" service.

(7) Performance Bond. The proponent of a support tower shall obtain a performance bond for the purpose of ensuring adequate removal of the structure upon termination of its use, consistent with the following:

(a) The performance bond shall be equal to or greater than 150 percent of the estimated cost of removal of the support tower, but not less than \$1,000;

(b) For the purposes of this subsection, the estimated cost shall be based on the average of three (3) contractor's bids determined acceptable by the Review Authority, based on reasonable cost estimates by licensed, bonded contractors;

(c) To adjust for inflationary increases, the performance bond shall be renewed every five (5) consecutive years, based on current contractor's bids at the time of renewal as set forth in Subsection 33.49.510(7)(b);

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(d) The proponent may be exempt from this requirement; provided, the proponent is contractually responsible to the landowner for removal of the structure at all times during the life of the structure. If at any time the proponent is removed from responsibility, the proponent shall notify the County within fourteen (14) days of the change, at which time the proponent shall secure a performance bond as provided in this subsection. Failure to comply with this requirement will be considered a violation of this chapter and will be processed by the Department in accordance with procedures set forth under CCC 26.10.700(4) through (7), as now or hereafter amended;

(e) In the event a landowner obtains ownership of an abandoned support tower, the landowner shall secure a performance bond within thirty (30) days of acquiring ownership, consistent with this subsection;

(f) Proof of performance bonds shall be submitted prior to final permit approval, and shall be processed in accordance with CCC 26.10.705, as applicable;

(g) Removal of support towers and/or co-located equipment is the responsibility of the tower owner and co-locators. In the event a support tower is not removed consistent with this chapter, Clallam County will have the authority to foreclose on the performance bond and utilize such funds as necessary to remove the support tower consistent with this chapter.

(8) Other Uses. Facilities shall not be used for storage of materials or equipment other than those used in operation and maintenance of the associated facility, nor shall WCFs be used for any other purposes other than the intended use as approved.

(9) Hazardous or Toxic Materials. No hazardous or toxic substances shall be discharged on the site of any wireless communications facility. If any such substances are to be used on site, provisions must be made for containment in the event of a spill. An enclosed containment area shall be provided with a sealed floor, designed to contain at least 110 percent of the volume of the hazardous or toxic materials stored on site. Any use of hazardous or toxic materials shall also be subject to federal, State, and local regulations, if applicable.

(10) Signage. Wireless communication towers and antenna(s) shall not be used for signage, symbols, flags, banners, or other devices or objects attached to or painted on any portion of a WCF except: emergency information, public safety warnings, and any additional signage required by a governmental agency shall be displayed in an appropriate manner and, if applicable, in compliance with the Clallam County Sign Code, Chapter 33.57 CCC.

(11) Anti-Climbing Devices. All support structures and security fencing shall be equipped with appropriate anti-climbing devices.

(12) Noise. Wireless communication facilities shall not generate noise levels in excess of maximum standards set forth in the Washington Administrative Code, Chapter 173-60 WAC. Generators may be allowed only for emergency operation purposes. If air conditioning or other noise generating equipment is proposed, the applicant shall provide information detailing the expected noise level and any proposed abatement measures. This may require noise attenuation devices or other mitigation measures to minimize impacts.

(13) Attachment to Trees Prohibited. It is prohibited to attach any WCF or portion thereof to any tree.

33.49.520 Performance standards.

(1) Height. Where siting of a WCF is allowed, the following height restrictions shall apply, provided that if a proposed site is also subject to other governmental height restrictions, the more stringent standards shall apply:

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(a) Attached WCFs. Attached WCFs shall not add more than fifteen (15) feet in height to the support structure to which it is attached, nor shall such additional height exceed maximum height restrictions pursuant to subsection (1)(b) of this section.

(b) WCFs with Support Towers.

(i) Resource Zones. Maximum height shall be 200 feet.

(ii) Rural Zones. Where allowed in rural zones within Preference 2 areas, maximum height shall be 150 feet. Within Preference 3 rural zones, maximum height shall be 100 feet.

(iii) Urban, Commercial, and Industrial Zones. Maximum height shall be eighty-five (85) feet.

(2) Setbacks. Setbacks shall be measured from the base of the WCF support tower to the property line of the parcel on which it is located. Setbacks for auxiliary structures shall be those of the underlying zoning district or a minimum of twenty-five (25) feet, whichever is greater. The following setback standards shall apply for new support tower installations:

(a) Setbacks shall be equal to 110 percent of the height of the support tower or 150 feet, whichever is greater.

(b) In all areas, an attachment device or attached antenna may not encroach into a required setback as specified in the underlying zone. All equipment shelters, cabinets, or other on-the-ground auxiliary equipment shall also be subject to the setback requirements provided by this chapter.

(3) Landscaping and Screening. The goal of an approved landscaping and screening plan is to establish and maintain healthy, long-lived, native vegetation in such a configuration as to effectively screen or conceal WCFs from view. To this end, a landscaping and screening plan shall be submitted with all proposal applications, subject to review.

To the extent possible, existing native vegetation shall be retained. If the Review Authority finds that existing vegetation is inadequate for screening of a WCF, supplemental plantings of fast-growing, drought-resistant native species outside the facility security fencing shall be required as the responsibility of the facility operator. Additionally, the operator shall provide continued maintenance of required landscaping as necessary to maximize the survivability and effectiveness of the vegetative screening.

Except for those proposals pursuant to CCC 33.49.510(3)(e), New Support Towers at Existing Sites, all new support towers shall be subject to the following screening standards:

(a) Preference 1 and 2 areas: New support tower facilities shall maintain a minimum 100-foot radial screening buffer of mature, coniferous forests for the lifetime of the facility. A minimum area around the tower may be established as a clear safety zone;

(b) Preference 3 areas: New support tower facilities shall maintain a minimum 150-foot radial screening buffer of mature, coniferous forests for the lifetime of the facility. A minimum area around the tower may be established as a clear safety zone.

(c) Buffers shall be measured from the outside edge of the clear safety zone.

(d) Screening buffers may be reduced up to a maximum of fifty (50) percent if the proposed new support tower utilizes camouflage technology (e.g., camouflaging a tower to resemble a conifer) to minimize visual impacts.

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(e) Minimum "average tree height" of the trees within the radial screening buffer shall equal or exceed two-thirds (2/3) of the height of the proposed support tower.

(f) Existing canopy cover of the radial screening buffer shall equal or exceed sixty (60) percent. The canopy cover standard may be reduced up to fifty (50) percent if camouflage technology is employed.

(g) An applicant may seek a variance from the screening provisions of this section by satisfying the requirements specified in CCC 33.49.530, Variances, and as required by Chapter 33.30 CCC, Variances.

Average tree height shall be determined by referring to the estimated mean site index for a given site as provided by the U.S. Department of Agriculture's Soil Survey of Clallam County. This index is then compared to the age class of the on-site stand of timber by reference to Weyerhaeuser Forestry Paper #8, July, 1966, Site Index Curves to determine the estimated average tree height of a given site.

Example:

In this example, a proposed site is dominated by Catla gravelly sandy loam, as described by the Soil Survey of Clallam County, and is forested by Douglas fir, estimated to be forty (40) years old. The survey describes the estimated mean site index for Douglas fir for these soils, based on a fifty (50) year site curve, as eighty-two (82) feet.

Referring to the above referenced Weyerhaeuser paper, one finds the fifty (50) year site index table for Douglas fir. Reading down the far left column labeled "Breast-height Age" one comes to the appropriate forest age (in this case, forty (40) years). Then, reading across this row until it comes to the column labeled "80" (the nearest figure to the site index of eighty-two (82) provided by the soil survey) it is determined that the average tree height for this stand of timber is approximately 69.3 feet.

This method requires the applicant to determine the age class of the forest stand on site, and to demonstrate to the Review Authority the means by which the age was estimated.

In the event that average tree height cannot be estimated by the above method, alternative means may be used. In these situations the applicant must provide adequate documentation of the methodology by which the height was determined.

Topping of screening trees shall be allowed to maintain operation of a facility; however, any topping activity shall be subject to all other applicable regulations (e.g., Chapter 27.12 CCC, Critical Areas Code). Such removal of vegetation shall be restricted to only that which is necessary for continued operation, and to the greatest extent possible shall not result in the deaths of trees. Topping shall be considered an amendment to the original landscaping and screening plan and shall require the proponent to present written documentation of this amendment to the Review Authority for approval.

(4) Color and Camouflage. For all new wireless communications facilities, the following criteria shall apply:

(a) Unless otherwise required by the FAA, all support towers and antennas shall have a nonglare finish of gray, blue, green or other color and/or combination of colors, that effectively blends with the natural background. Similarly, any auxiliary support equipment shall be finished in a manner that blends with background vegetation. Final determination of color or finish shall be subject to the approval of the Review Authority, based on sample finish chips submitted in accordance with CCC 33.49.630(3), Application Submittal.

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(b) Antennas and associated equipment not located on a support tower shall be of a neutral color that matches the color of the supporting structure to the greatest extent to minimize visual impacts.

(c) The use of camouflage techniques shall be encouraged. Such camouflage shall be appropriate to the environment in which the facility is proposed. Proposals employing such technology shall include provisions for adequate maintenance to ensure camouflage effectiveness for the useful life of the facility.

(5) Security and Lighting. Communication towers and associated structures shall be surrounded by locked security fencing a minimum of six (6) feet in height. Fencing shall include privacy slats if deemed necessary by the Review Authority, and shall be of a color that blends with the surroundings as per subsection (4) of this section. As stipulated in CCC 33.49.510(12), anti-climbing device(s) shall be required for security fencing.

Except as required by the FAA, artificial lighting of wireless communications towers shall be prohibited. Security lighting for equipment shelters or cabinets and other on-the-ground auxiliary equipment is allowed, as long as lighting utilizes "cut-off" type fixtures and is down-shielded to keep direct light within the site boundaries. White strobe lighting shall be prohibited.

33.49.530 Variances.

Any applicant may request a variance from the standards of this chapter. Requests for variance shall be made in accordance with the procedures and criteria specified in Chapter 33.30 CCC, Variances. In the granting of a variance, the Hearing Examiner shall also find, in addition to the above criteria, the following:

(1) Strict adherence to the provisions of this chapter will result in an inability of the applicant to provide adequate "in-vehicle" services within Clallam County;

(2) The granting of the variance will not adversely affect views from designated scenic highways or areas of historic or cultural significance; and

(3) As may be applicable, strict adherence to the screening provisions specified in CCC 33.49.520 is not possible due to the lack of tree cover on the parcel and provided that other aesthetic provisions, including camouflage techniques, have been utilized.

33.49.600 Permit process.

The following sections describe wireless communications uses in relation to the different types of review that are required for specific proposals. As specified within the Process Review Table below, given types of proposals are matched to either administrative (Types I and II) or quasi-judicial (Type III) review as required. Additionally, provisions for application submittal, permit fees, and third-party review are discussed in the subsections that follow.

33.49.610 Temporary WCF.

In order to facilitate continuity of services during maintenance or repair of existing installations, or prior to completion of construction of a new WCF, temporary wireless communication facilities may be allowed subject to administrative review. Temporary WCFs shall not be in use in excess of sixty (60) days at any one location during any given six (6) month period. Temporary WCFs shall not have a permanent foundation, and shall be removed within thirty (30) days of suspension of services they provide.

33.49.620 Process review table.

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The following table describes those site priority locations and uses in terms of required levels of review. Types I and II reviews are administrative; while Type III reviews are quasi-judicial, each type subject to procedures specified under Chapter 26.10 CCC, Clallam County Consolidated Development Permit Process Code. Proposals requiring Type III review will necessitate approval of a conditional use permit.

Table 33.49.620 – Process Review

Site Priorities	Type I Review	Type II Review	Type III Review
Co-located attached WCF	Yes	No	No
Power pole replacement	Yes	No	No
Preference 1 areas	Yes	No	No
Attached WCF (nonresidential zones)	No	Yes	No
Preference 2 areas	No	No	Yes
Attached WCF (residential zones)	No	No	Yes
Preference 3 areas	No	No	Yes
Temporary WCF	Yes	No	No
All others	No	No	Yes

33.49.630 Application submittal.

In addition to materials required pursuant to CCC 26.10.310, Permit Processing – General Requirements, applications for the locating and development of wireless communications facilities and antennas shall also include the following:

- (1) A scaled site plan, which in addition to the site plan requirements of CCC 26.10.310(3), clearly indicates the location of the proposed facility in relation to significant features within 2,500 feet including, but not limited to, existing and/or proposed site structures, public rights-of way, residential developments, adjacent land uses, and properties used for public purposes. The site plan shall also include any governmental jurisdictional boundaries within 500 feet of the proposal boundaries.
- (2) Proposals for new support towers shall include a detailed landscaping and screening plan, including existing and proposed vegetation, installation procedures, and landscaping/screening maintenance plans. Included in the plan shall be height, species, and age class determinations of the existing, dominant forest buffer, if applicable.
- (3) If camouflage technology is proposed, the applicant shall provide a complete description of the suggested camouflage, including style and materials to be used, a photographic depiction of the proposed facility, and a maintenance plan detailing provisions for the continued effectiveness of the suggested camouflage for the life of the facility. Color and finish plans shall be provided, including color finish sample chips indicating the proposed color scheme.
- (4) Elevation drawings of the proposed facility, including any anticipated tower, equipment structures, antennas, mounts and, if applicable, any existing structures. Other applicable features, including but not limited to security fencing and screening shall be included.

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- (5) A comprehensive description of the existing or proposed facilities including the technical reasons for the design and configuration of the facility, design and dimensional information, coverage schemes, and the capability of future co-location opportunities, including documentation which demonstrates that the applicant has contacted safety and emergency services agencies pursuant to CCC 33.49.510(1)(d)(3), General Standards – Co-location. In the event the applicant cannot accommodate future co-location, a detailed written statement or report demonstrating such unfeasibility shall be prepared by the applicant. Infrastructure providers shall also present an analysis of existing WCFs within the intended service area, describing the status of co-location opportunities at these sites. The County may deny a new support tower proposal if future co-location is not provided or if the applicant is unable to demonstrate to the satisfaction of the Review Authority that co-location is not feasible within the intended service area.
- (6) The application materials shall include a report by a licensed professional engineer demonstrating the following:
- (a) The facility complies with all requirements of the Uniform Building Code;
 - (b) The structural capability of the facility will support co-located antennas (if applicable);
 - (c) The facility complies with all applicable standards of the FAA and FCC, including RF energy standards; and
 - (d) The basis for the calculation of capacities.
- (7) Documentation that establishes the applicant's right to use the site shall be provided at the time of application.
- (8) Applicants shall provide proof of FAA final air space determination (Form 7460-1) prior to issuance of any final conditional use permit (CUP) approval.
- (9) An analysis of the proposal area and discussion of factors influencing the decision to target the proposed location. Such analysis shall include the "good faith" efforts and measures taken to secure a higher priority location; how and why such efforts were unsuccessful; and how and why the proposed site is essential to meet service demands for the geographic service area (refer to CCC 33.49.510(1), General Standards – Co-location).
- (10) The application materials shall include a photographic analysis of the proposed site, including a representation of existing conditions and photographic simulations depicting views of any new support structures or towers from Highways 101 and/or 112.
- (11) All applicable fees.
- (12) Any additional applicable information the Review Authority deems necessary to adequately review the proposal.

33.49.640 Third party review.

The County may require technical review by a third party as part of the permit review process. The selection of the third party expert shall be by mutual agreement by the applicant and the County. If agreement between the County and the applicant cannot be reached, the third party shall be selected at the discretion of the Hearing Examiner. Costs of the technical review shall be borne by the applicant. Based on the results of the expert review, the County may require changes to the applicant's submittal. A third party review may include, but is not limited to a review of the following:

- (1) The technical accuracy and completeness of submission;
- (2) The technical applicability of analysis techniques and methodologies;

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- (3) The validity of conclusions reached by the applicant, including arguments against co-location; and
- (4) Other specific technical issues as identified by the County or Hearing Examiner.

33.49.650 Permit fees.

Subsections (1) through (3) of this section shall remain in effect until such time as the Clallam County Fee Schedule, Chapter 3.30 CCC, can be amended to include the following applicable wireless communication facility permit fees:

- (1) Wireless communications facility permit fees for proposals requiring Type I review shall be \$650 except fees for temporary WCFs shall be \$400.
- (2) Wireless communications facility permit fees for proposals requiring Type II review shall be \$750.
- (3) Wireless communications facility permit fees for proposals requiring Type III review shall be \$1,500 (includes conditional use permit review).
- (4) All other applicable fees (e.g., environmental checklist review fee, binding site plan review) shall also be assessed and shall be in the amounts specified by the Clallam County Department of Community Development Fee Schedule, Chapter 3.30 CCC, except variance permit fees concurrent with wireless communications permits shall be assessed in the amount of \$300.
- (5) Multiple installation proposals may be submitted under a single application; provided, that no more than one support tower may be proposed per submission. Each co-location proposal submitted concurrently with a new support tower application shall be assessed a wireless communications facility permit fee in the amount of \$200.

33.49.700 Abandonment and removal.

Any wireless communication facility that has been discontinued or not in operation for a period of one year shall be considered abandoned. The owner shall then report in writing such discontinued use within fourteen (14) days to the Planning Director. Abandoned facilities shall be completely removed by the property owner and/or support tower owner within 180 days from the date of abandonment, and the site shall be re-vegetated. If such WCF is not removed within the 180-day removal period, the governing authority may remove the WCF at the owner's expense.

The Clallam County Code is current through Ordinance 928, passed July 25, 2017.

Disclaimer: The Commissioner's Office has the official version of the Clallam County Code. Users should contact the Commissioner's Office for ordinances passed subsequent to the ordinance cited above.

APPENDIX C TO BRIEF OF APPELLANT

Case No. 50144-9-II

Handout provided to Trial Court and Parties
at Hearing on the Merits

EIGHT PAGES FROM THE ADMINISTRATIVE RECORD

DUNGENESS HEIGHTS HOMEOWNERS

V.

RADIO PACIFIC, INC. ET AL.

CLALLAM COUNTY SUPERIOR COURT

NO. 16-2-00226-1

SUBMITTED BY GERALD STEEL FOR DHH
FOR ORAL ARGUMENT ON 12-20-2016 AT 2 PM
BEFORE THE HONORABLE ERIK ROHRER

AR 62

AR 46

AR 47

AR 1230

AR 1231

AR 1222

AR 1228

AR 1232

KEY NOTES

1. EXISTING TREE LINE
2. EXISTING NON-DEDICATED DIRT ROAD
3. NEW ACCESS & UTILITY EASEMENT
4. TOP OF BANK
5. EXISTING ADJACENT RESIDENTIAL DWELLING UNITS
6. EXISTING OVERHEAD POWER UTILITY LINE/CENTER LINE OF EASEMENT
7. 50' RADIAL TREE BUFFER*
8. DEVELOPMENT RESTRICTION EASEMENT LINE*
9. NEW 12' GRAVEL-PAVED ACCESS ROAD AND COMPOUND
10. NEW CHAIN-GATE WITH 6" BOLLARDS
*SEE COMMENT LETTER TO OTHER EASEMENTS & EXHIBIT B-2
IN ATTACH TO LEASE AGREEMENT CONTRACT ID: RPN 104.9 IN#2
OPTIONED AS EXHIBITS TO THE TYPE III INCT/CUP APPLICATIONS.

AREA SITE SECTION

SCALE: 1"=100'-0"

FENCED COMPOUND

50'-0"

RADIO PACIFIC, INC. 104.9 FM
BRIGADOON ROAD
SEQUIM, WA 98382
CONDITIONAL USE
COMPOUND PLAN

COMPUND PLAN

PLANNED PERMANENT/TEMPORARY

KENNETH HAYS
ARCHITECT

120 West 8th Street Suite 1-R
Port Office Box 322
Sequim, Washington 98382
360.663.8877
www.khayarch.com

revisions	mk	description	date

project number
1504-KONP
date: 4/21/2015
scale: 1/4" = 1'-0"
drawn: KCH
reviewed:

A1.1

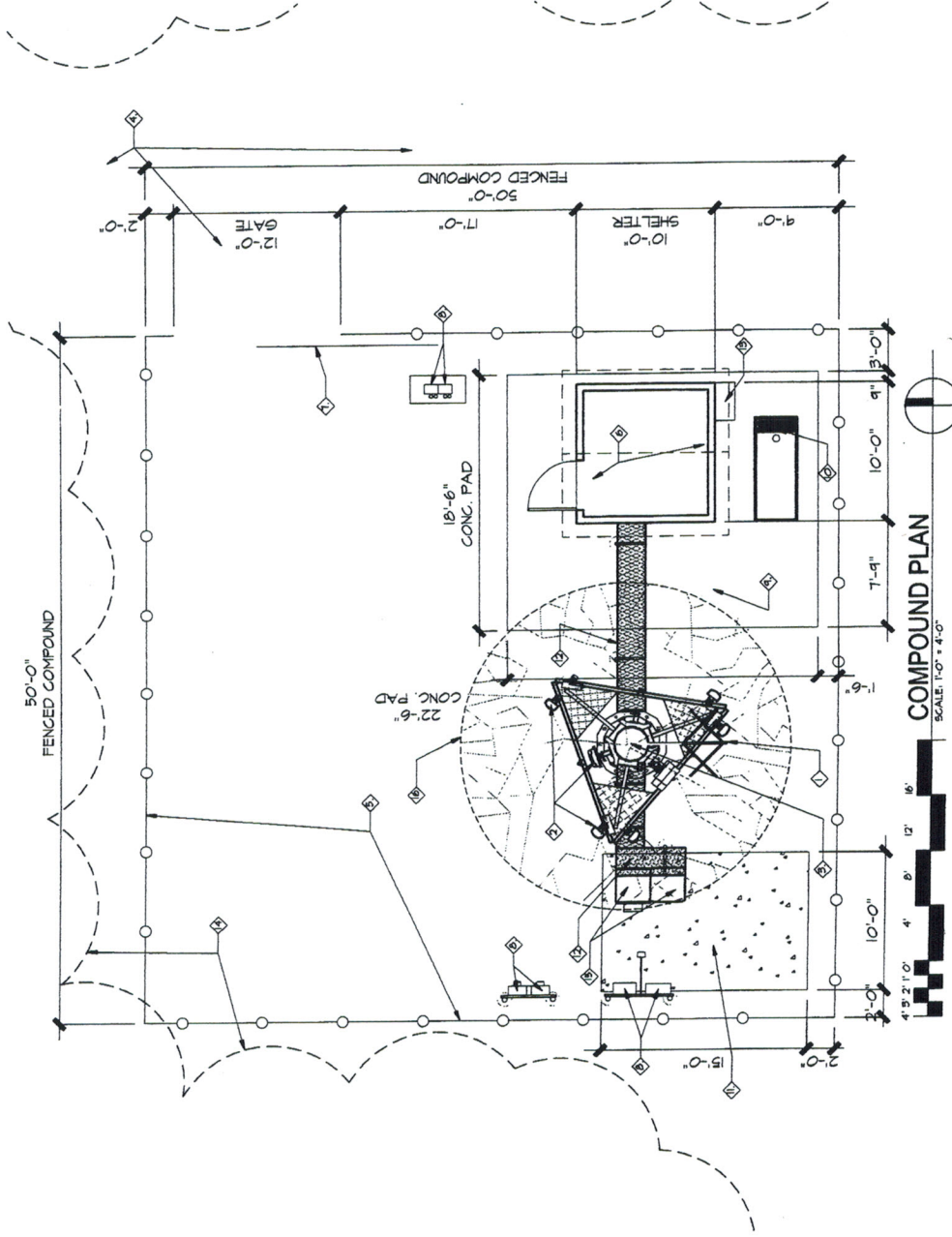
drawing page

KEY NOTES:

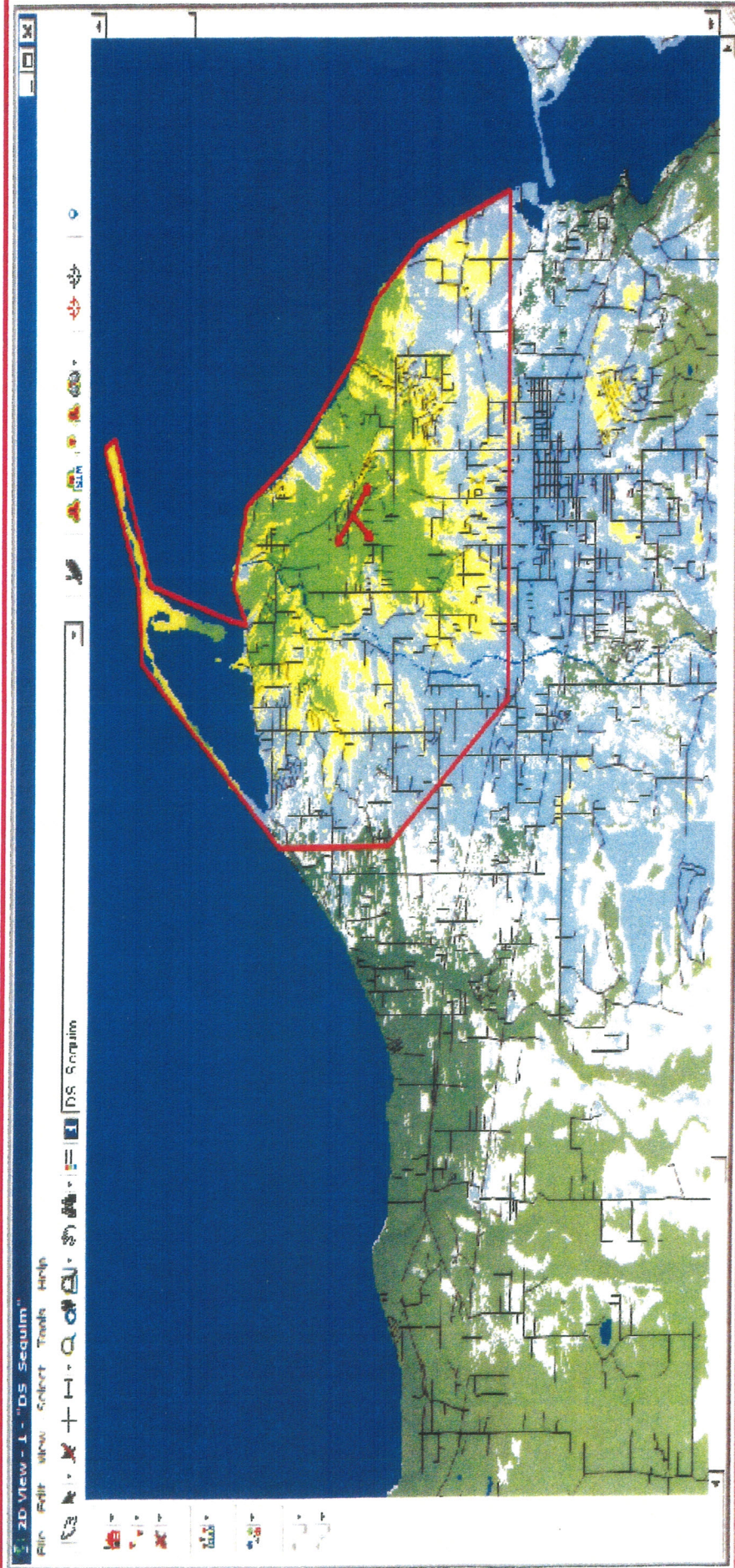
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2. T-MOBILE ANTENNA ARRAY
3. PROPOSED 150'-0" ASL MONOPINE TOWER
4. PROPOSED GRAVEL ACCESS ROAD
5. PROPOSED 8'-0" HIGH GALV. STEEL WESH FENCE
6. PROPOSED SITE BUILT LIGHT FRAME CONSTRUCTION EQUIPMENT SHELTER
7. 12'-0" ROLLING WESH FENCE ACCESS GATE
8. 4 POSITION METER BANK ON H-FRAME
9. 18' X 22' CONCRETE SHELTER & EQUIPMENT PAD
10. SELF-CONTAINED EMERGENCY GENERATOR
11. 10' X 15' CONCRETE EQUIPMENT PAD
12. ICE BRIDGE
13. 2 TON WALL-HUNG SHELTER AC UNIT
14. EXISTING TREE LINE
15. T-MOBILE BTS EQUIPMENT CABINET
16. 12' RADIUS HIDE MONO-PINE DRIP LINE FOLIAGE

COMPOUND PLAN

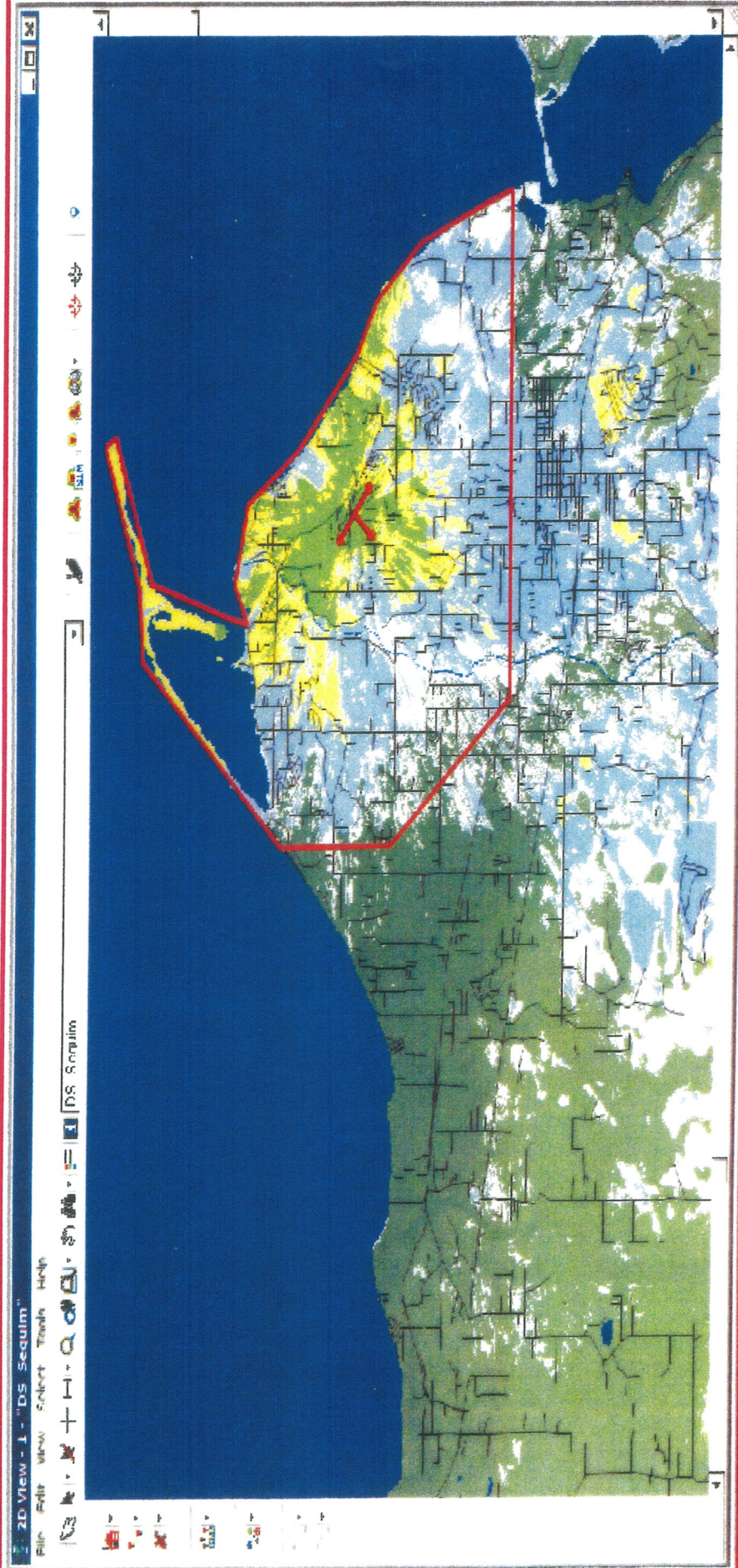
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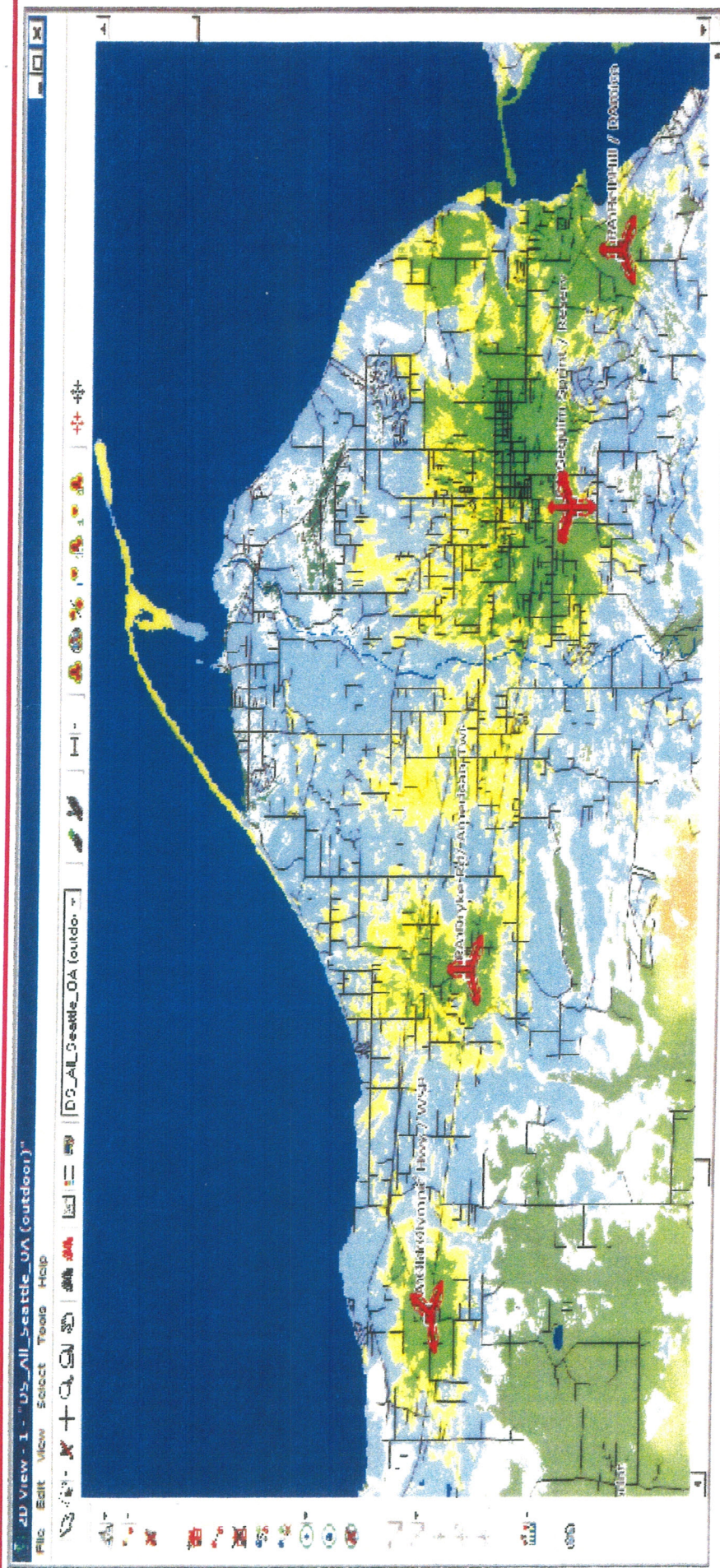
SE05741A RPI at 135 feet



SE05741A at 75 feet



On Air sites coverage



Coverage Notes:

- The coverage footprint is shown using four thresholds, each of which identifying a specific type of required coverage:
 - Green – Commercial in-building levels (Best and most reliable coverage)
 - Yellow – Residential in-building levels (Good reliable coverage)
 - Light Blue – In-vehicle coverage (does not guarantee in-building coverage)
 - Light gray – Outdoor coverage only
- The stronger coverage levels will also translate into higher data rates for data services.
- A larger coverage footprint is better for E911 services i.e. emergency calls can be made within a much larger area.
- Polygon shown in red is used to identify the desired coverage areas.
- Coverage statistics are calculated across the area encompassed by the polygon.

Coverage Statistics

Total POPS in polygon	9236
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In-building residential

Site	Antenna Height	Vector	Total area(km ²)	Area(km ²)[In-building]	Area(%)[In-building]	% Increase	Comments
RPI	RC = 75 feet	Sequim	64.797	24.629	38.009%		
RPI	RC = 135 feet	Sequim	64.797	38.410	59.278%	21.27%	Going from 75 to 135 feet
T-Mobile	RC = 150 feet	Sequim	64.797	47.073	72.647%	34.64%	Going from 75 to 150 feet

Site	Antenna Height	Covered POPS	POP increase	% Covered POPs
RPI	RC = 75 feet	2451		26.54%
RPI	RC = 135 feet	7230	4779	78.28%
T-Mobile	RC = 150 feet	7325	4874	79.31%

APPENDIX D TO BRIEF OF APPELLANT

Case No. 50144-9-II

Former Bellevue Land Use Code ("BLUC") 20.30G.140B

8-05-85
0898c

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 3530

AN ORDINANCE establishing procedures for the processing of development project applications; establishing requirements for decisions required by the Bellevue City Code (Land Use Code); revising the Bellevue City Code (Land Use Code) to consistently reference revised processes and decisions; adopting a section regarding assurance devices; amending Bellevue City Code (Land Use Code) 20.10.080, 20.10.400.A, 20.10.400.C, 20.10.400.D, 20.10.400.E, 20.10.420, 20.10.440, 20.20.010, 20.20.018, 20.20.160, 20.20.170.D.2.a, 20.20.170.E.2.a, 20.20.170.F.2.b, 20.20.200.A, 20.20.255.E, 20.20.280, 20.20.400.A, 20.20.430, 20.20.520.J, 20.20.520.K, 20.20.520.L, 20.20.560.D, 20.20.560.E, 20.20.650.A, 20.20.740, 20.20.890.B, 20.20.900.C, 20.20.900.D, 20.20.950.G, 20.25A.010.B, 20.25A.020.A.2, 20.25A.020.C.2, 20.25A.030.B, 20.25A.050.H.2.a, 20.25A.050.J, 20.25A.070.A, 20.25A.080.B, 20.25A.090.B.2.d, 20.25A.100.C, 20.25A.100.E.1.c, 20.25A.100.E.1.e.ii, 20.25A.100.E.1.f.ii, 20.25A.100.E.1.h, 20.25A.100.E.1.j.ii, 20.25A.100.E.6.d.ix.2, 20.25A.100.E.6.d.x.2, 20.25A.110, 20.25B.040.A, 20.25C.010, 20.25D.010, 20.25E.070, 20.25E.080.V, 20.25E.080.W, 20.25F.010.A, 20.25F.020.B, 20.25F.020.G.2, 20.25F.030.A, 20.25F.040.B, 20.25F.040.C.1.d, 20.25F.040.C.10, 20.40.250.A, 20.40.260, 20.40.530.A.4; repealing Bellevue City Code (Land Use Code) 20.20.515, 20.20.775, 20.20.880, 20.25B.040.C, 20.25C.050, 20.25C.060, 20.25C.070, 20.25D.020, 20.30, 20.40.270, 20.40.420, 20.40.530.B, 20.40.530.C, 20.40.530.D, 20.40.532, 20.40.535, 20.40.550, 20.40.555, 20.40.557, 20.40.560, 20.40.565; adding a new Section 20.40.490 to the Bellevue City Code (Land Use Code); and adding new chapters to the Bellevue City Code (Land Use Code) to be designated Chapters 20.30 and 20.35.

WHEREAS, the Bellevue City Council did, on December 17, 1984, adopt Ordinance No. 3447 creating a Department of Design and Development and providing for the responsibilities of that Department; and

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B. The Director of Design and Development may grant no more than two extensions. A second extension may be granted if --

1. The criteria listed in Paragraph A of this Section are met, and
2. The applicant has demonstrated reasonable diligence in attempting to meet the time limit imposed, and
3. Conditions in the immediate vicinity of the subject property have not changed substantially since the Design Review was first approved.

.160 Assurance Device: In appropriate circumstances, the City may require a reasonable performance or maintenance assurance device in conformance with Section 20.40.490 to assure compliance with the provisions of the Land Use Code and the Design Review as approved.

.165 Merger with Binding Site Plan:

- A. General: The applicant may request that the site plan approved with the Design Review constitute a Binding Site Plan pursuant to RCW 58.17.
- B. Survey and Recording Required: If a site plan is approved as a Binding Site Plan, the applicant shall provide a recorded survey depicting all lot lines and shall record that site plan and survey with the King County Department of Records and Elections. No document may be recorded without the signature of each owner of the subject property.
- C. Effect of Binding Site Plan: Upon the approval and recording of a Binding Site Plan the applicant may develop the subject property in conformance with that Binding Site Plan and without regard to lot lines internal to the subject property. The applicant may sell or lease parcels subject to the Binding Site Plan.

20.30G Variance from the Land Use Code

.110 Scope: This Part (20.30G) establishes the procedures and criteria that the City will use in making a decision upon an application for a variance from the provisions of the Land Use Code.

.115 Applicability: This Part applies to each application for a

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variance from the provisions of the Land Use Code, except as otherwise provided in Part 20.30H (Variance to the Shoreline Master Program).

- .120 Purpose: A variance is a mechanism by which the City may grant relief from the provisions of the Land Use Code where practical difficulty renders compliance with the provisions of that Code an unnecessary hardship, where the hardship is a result of the physical characteristics of the subject property and where the purpose of that Code and of the Comprehensive Plan can be fulfilled.
- .125 Who May Apply: The property owner may apply for a variance from the provisions of the Land Use Code.
- .130 Applicable Procedure: The City will process an application for a variance from the provisions of the Land Use Code through Process III, (Section 20.35.300 et seq). The Director of Design and Development is the applicable Department Director.
- .135 Submittal Requirements:
- A. The Director of Design and Development shall specify the submittal requirements, including type, detail and number of copies, for a variance application to be deemed complete and accepted for filing.
 - B. The Director of Design and Development may waive specific submittal requirements determined to be unnecessary for review of an application.
- .140 Decision Criteria: The decision maker may approve or approve with modifications an application for a variance from the provisions of the Land Use Code if --
- A. The variance will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and Land Use District in which the property on behalf of which the application was filed is located, and
 - B. The variance is necessary because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property to provide it with use rights and privileges permitted to other properties in the vicinity and in the Land Use District in which the subject property is located, and

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- C. The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and Land Use District in which the subject property is located, and
- D. The special circumstances of the subject property make the strict enforcement of the provisions of this Code an unnecessary hardship to the property owner, and
- E. The special circumstances of the subject property are not the result of the actions of the applicant, and
- F. The variance is the minimum necessary to fulfill the purpose of a variance and the need of the applicant, and
- G. The variance is consistent with the purpose and intent of the Land Use Code; and
- H. The variance is in accord with the Comprehensive Plan.

.145

Board of Adjustment - Vote on the Criteria:

- A. This Section applies to those variance applications heard and decided by the Board of Adjustment.
- B. Prior to a vote on a motion to approve, approve with modifications or deny the variance application, the Board of Adjustment shall vote on each criterion listed in Section .140 separately and by roll call. The vote of each member on each criterion will be recorded in the written minutes of the public hearing.
- C. A motion to approve or approve with modifications may only be made if an affirmative vote of a majority of the entire membership of the Board of Adjustment has occurred for each of the criteria listed in Section .140.

.150

Limitation on Authority: The decision maker may not grant a variance to --

- A. The provisions of Section 20.10.440 establishing the allowable uses in each Land Use District, or
- B. The provisions of Chapter 20.30, 20.35 or any other procedural or administrative provision of the Land Use Code, or
- C. Any provision of the Land Use Code within the primary

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effective until the effective date of Ordinance No. 3531.

PASSED by the City Council this 12th day of August, 1985,
and signed in authentication of its passage this 12th day
of August, 1985.

(SEAL)


Cary E. Bozeman, Mayor

Approved as to form:

Richard L. Andrews, City Attorney


Richard L. Andrews, City Attorney

Attest:


Marie K. O'Connell, City Clerk

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